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IN THE

Supreme Court of the United States

October Term, 1943

No. 472.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

EDNA W. BALLARD and DONALD BALLARD,
Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

BRIEF FOR THE RESPONDENTS.

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On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

BRIEF FOR THE RESPONDENTS.

Statement of the Case and Facts Disclosing Basis of Jurisdiction.

The indictment charges that the defendants, together with Guy W. Ballard, now deceased, and divers other persons, between the early part of 1930 and the date of the filing of the indictment, did devise a scheme and artifice to defraud by means of false and fraudulent representations. The general allegations of scheme and plan are alleged in paragraphs (a) to (i), inclusive. Subdivisions 1 to 20 of paragraph (i) set forth the particulars of the alleged misrepresentations. Thereafter are set forth the mail fraud Counts I to XII.

The defendants are all members and leaders of the "I AM" Activity, a religious organization which was founded in about the year 1932, upon teachings received by the now deceased Guy W. Ballard, husband of the defendant Edna W. Ballard, through revelations from Ascended Masters, particularly from one of the Ascended Masters, Saint Germain. Mr. Ballard received these revelations commencing in the latter part of 1930 and until shortly before his death, in December of 1939. These teachings were disseminated through classes held by Mr. Ballard and other defendants, through the formation of groups of students and by the distribution of books and magazines.

The members and students of the "I AM" Activity are chiefly found in the United States, but the Activity has groups in Canada and in several foreign countries. No actual lists or membership records are kept of the students and followers, but it is estimated that the number is, at the very least, 300,000 and may be many times that number.

The first book containing the teachings of the "I AM" Activity was "Unveiled Mysteries", following the publication of which, meetings were held and lectures given by the Ballards in and about Chicago. Later, at the suggestion of one of the followers, a Mr. Sieber, the Ballards held classes in other cities and groups of students in various cities were formed.

As a result of these classes and the dissemination of the teachings through the books, a large number of persons having become interested in the teachings, groups, reading rooms and sanctuaries were established in practically every large city of the United States and in a great

number of the smaller ones. At the present time there are hundreds of these groups maintaing reading rooms and sanctuaries.

In the reading rooms of the Activity the literature which contains the basis for the teachings is maintained and may be read by anyone who desires, without charge of any kind. The books and literature are contained not only in the reading rooms, but also in most of the large libraries of the country, including the Congressional Library. They have been published in Braille and have been placed in numerous penal and other institutions throughout the country.

The various groups are not financially accountable to the head of the organization. Their expenses are defrayed by themselves. The groups are not required to in any way contribute to the leaders of the organization. However, as to the manner of conducting the meetings, as to the subjects which shall be taught and as to the manner in which they may be taught, the groups are controlled and directed by the head of the organization. Group leaders are in charge of each group and they are appointed through the Ballards. The activities of the Movement are carried on through Saint Germain Foundation, a non-profit corporation. The books above mentioned, and other religious articles, are printed and distributed through the Saint Germain Press, the stock of which is owned by the Ballards. The Ballards are the officers of both corporations.

The Ballards are the Accredited Messengers of the Ascended Masters and with their son Donald, and others of the defendants, who are appointed messengers, conduct classes in various cities throughout the United States,

which classes are, in effect, congresses at which the Ballards and other appointed messengers teach and explain the precepts and doctrines of the "I AM" Activity. These classes are attended by group leaders, students and others who may be interested, some of the larger classes having attendance of as many as 5000.

All revelations of the Activity were, as aforesaid, received by Mr. Ballard during his lifetime, and since the death of Mr. Ballard the named defendants and many others have been engaged in expounding the teachings contained in these revelations.

Commencing in 1937, radio broadcasts have been given by the Activity, which programs expound its teachings and doctrines. These radio programs are authorized by the Ballards and are sponsored by individual groups, private persons or by the Ballards personally.

The finances of the organization are all received either through voluntary donation or love gifts from its students or from the proceeds of the books, and religious articles used in the Activity. No dues, membership fees or tithings are charged or asked for, and the individual groups are not financially responsible to or dependent upon the central organization, conducted by the Ballards.

There is a monthly magazine authorized by the "I AM" Activity which is known as "The Voice". The Activity has no financial interest in this magazine, but it is a means of release of its teachings and for the release of announcements pertaining to affairs of the Activity. This magazine is published by Charles Sindelar, a member of the Activity, and whatever profits result from its publication and sale belong to Mr. Sindelar. Mr. Sindelar has,

prior to and since the publishing of the magazine, made substantial love gifts to the Activity.

The "I AM" Activity fosters an organization of its male members, known as Minute Men, whose especial purpose is the advancement of patriotism to the United States and the defeat of all anti-American societies.

All moneys received by the Ballards, as leaders of the Activity, whether from love gifts, donations or from sales or otherwise, are in turn used by the Ballards in the advancement and expansion of the Activity. The Ballards, of course, as well as the other messengers, necessarily defray their living maintenance and overhead expenses and the expenses of traveling of themselves and staff from place to place from income of the Activity. This is necessarily so, as the Ballards, the messengers and many of the group leaders have no business pursuits and devote their entire time to the advancement of the "I AM" Activity.

One of the best statements of the fundamentals of the beliefs and teachings of the "I AM" Activity is that contained in the first radio broadcast given by Mrs. Ballard, which was reported in "The Voice", June, 1937, at pages 9 to 15 [Exhibit 26]. We have printed this broadcast in full in the Appendix to this brief [page 1], as it contains a most enlightening explanation of the Activity.

Further explanations of the beliefs of the "I AM" Activity will appear throughout the brief, so it will be unnecessary to extend the analysis of these concepts here. The Activity recognizes the existence of the Supreme Being, God, ascension with eventual immortality, a series of re-embodiments until a state of perfection is reached and a most elevating and comprehensive use and applica-

tion of the principles of faith. The Activity believes in a high code of morals, forbids the use of intoxicants, tobacco and over-indulgence in sex. It believes generally in the attainment, by each individual, of harmony and perfection. In respect to the attainment of harmony the Activity does not believe in the use of harsh colors and the use of animal flesh in diet.

The Ascended Masters, in whom the "I AM" Activity believes, are Divine Beings who exist in an intermediate sphere between God and man. The Ascended Masters are particularly devoted to the assistance of mankind in the attainment of high moral standards, harmony and eventual salvation. There are many Ascended Masters, Saint Germain being the most prominent in the "I AM" Activity. The words, "I AM" denote the existence and relationship of the God Being in or to each individual.

From the filing of the indictment through to the denial of the motion for new trial, the defendants questioned at every opportunity the sufficiency of the indictment and the sufficiency of the evidence offered in support thereof.

Midway in the presentation of the Government's case the Court instructed the jury [R. 402-404]:

> "Now, gentlemen, here is the issue in this case. First, the defendants in this case made certain representations of belief in a divinity and in a supernatural power. Some of the teachings of the defendants, representations, might seem extremely improbable to a great many people. For instance, the

appearance of Jesus to dictate some of the works that we have had introduced in evidence, as testified to here at the opening transcription, or shaking hands with Jesus, to some people that might seem highly improbable.

I point that out as one of the many statements.

Whether that is true or not is not the concern of this Court, and is not the concern of the jury—and they are going to be told so in their instructions. As far as this Court sees the issue, it is immaterial what these defendants preached or wrote or taught in their classes. They are not going to be permitted to speculate on the actuality of the happening of those incidents. Now, I think I have made that as clear as I can. Therefore, the religious beliefs of these defendants cannot be an issue in this Court.

The issue is: Did these defendants honestly and in good faith believe those things? If they did, they should be acquitted. I cannot make it any clearer than that.

If these defendants did not believe those things, they did not believe that Jesus came down and dictated, or that Saint Germain came down and dictated, did not believe the things that they wrote, the things that they preached, but used the mail for the purpose of getting money, the jury should find them guilty."

This charge was repeated to the jury in the final instructions upon submission of the case. [R. 1576.]

ARGUMENT I.

The Erroneous Instruction Did Not Correctly State the Issues.

It is notable that the Government's brief wholly neglects to consider that portion of the opinion of the Circuit Court of Appeals wherein it is pointed out that the instruction involved did not constitute "a correct statement of the issues." The erroneous instruction was given twice, once in the course of the trial [R. p. 403], and again in almost identical terms, at the conclusion of the trial, when the court instructed the jury. [R. p. 1575.] *It commences with the words "here is the issue in this case," and again, states: "The issue is." It concludes with the statement that if the defendants did not believe the things they wrote and preached, but used the mails for the purpose of getting money, "the jury should find them guilty."**

The instruction is clearly a formula or binding instruction, and the giving of it was error unless there was included in it all of the issues necessary to a verdict of guilty. In fact, it was doubly erroneous in that it not only stated the basis upon which the jury should find the defendants guilty, but on two occasions used the word "issue" in the singular when several issues were involved; nor was the issue stated, one actually before the jury.

A formula instruction should show the circumstances which must concur to warrant a verdict. *Corvello v. Baumstuger*, 115 C. A. 194, 1 P. (2d) 484. If an instruction undertakes to direct a verdict if the jury finds

*Note: All italics herein are ours.

certain facts, it must necessarily contain all of the facts which will authorize the verdict directed, and it is immaterial that the court in the instruction did not undertake to instruct the jury on the whole case. *Farmers League and Community Telephone Assn. v. Ohio & Mississippi Valley Telephone Co.*, 194 Ill. App. 166. If it fails to do so, it is fatally defective and cannot be cured by other instructions. *Gage v. City of Vienna*, 196 Ill. App. 585.

An instruction is erroneous and reversible error which makes the case turn solely upon a certain fact and fails to include certain issues and to leave to the jury inferences to be drawn from the facts. *Stutz v. U. S.*, 47 F. (2d) 1029, 5th.

An instruction which states that a certain question of fact constitutes the "underlying issue" in the case is erroneous when such question of fact was not the issue at all. *Sacramento Suburban Fruit Lands v. Harry Justice Curtis*, 36 F. (2d) 923. We submit that in this case the court, in effect, informs the jury that the case turns on a certain issue of fact when there were many and also incorrectly states the one issue mentioned.

In addition to repeating this instruction in its charge to the jury, that charge contains further instructions emphasizing the error and in language equivalent to that condemned in the last-mentioned case. The court stated to the jury:

> "The question of the defendant's good faith is the *cardinal* question in this case." [R. p. 1575.]

Again,

> "The *ultimate* question of fact before you as a jury is as to the good faith of the defendants. . . .". [R. p. 1589.]

The opinion of the Circuit Court pointed out that one of the issues not covered by the instruction was whether the defendants "devised the scheme described in Counts 1-11. *The instruction itself omits entirely the necessity of proof of the devising of* a scheme, yet the devising of a scheme is an essential of the offense charged in the indictment. *Worthington v. U. S.*, 64 F. (2d) 936; *U. S. v. Mannic*, 104 F. (2d) 575; *Cohen v. U. S.*, 50 F. (2d) 819.

The defendant must knowingly devise such scheme, specific intent being required under the statute. *U. S. v. Corlin*, 44 Fed. Supp. 940.

Individual false representations unrelated to each other and not part of a scheme to defraud are insufficient to prove an offense. *Rude v. U. S.*, 74 F. (2d) 673.

Thus, contrary to the instruction, a finding of all of the facts which the court stated would warrant a verdict of guilty would not constitute proof of an offense under the mail fraud statute or any other federal law. Furthermore, the proof required by the Government is that defendants devised *the scheme laid in the indictment*. Proof of misrepresentation of facts unrelated to the alleged scheme forming the basis of the charge will not warrant a verdict of guilty. *Rude v. U. S.*, 74 F. (2d) 673.

A most cursory comparison of the instruction complained of and the indictment will show that, while the indictment charged a particular scheme, the instruction authorizes a verdict of guilty if the defendants did not believe "the things that they wrote, the things that they preached." It is for that reason we state that the one issue attempted to be stated was not an issue at all.

The second issue omitted, as pointed out in the opinion of the Circuit Court, was whether for the purpose of executing a scheme they used the mails in the manner described in the counts. The court does say that they must have used the mails "for the purpose of getting money"; but, obviously, this was not the issue. The question was whether they used the mails in the furtherance of the scheme laid in the indictment and in the manner charged in the indictment. The correspondence must have some relation to the scheme to defraud which is charged. It must be in execution of the scheme. *McLendon v. U. S.*, 2 F. (2d) 660; *Newingham v. U. S.*, 4 F. (2d) 490; *Weiss v. U. S.*, 122 F. (2d) 675.

The opinion points out that a third issue omitted was whether the defendants conspired to commit the offenses charged in Counts 1-11. It is settled that the law requires, in the case of a conspiracy, not only a combination to accomplish the scheme by concerted action, but a conspiracy to use the mails to execute the scheme, proof of which is not required in other than the conspiracy count. Proof of *intention to use the mails to* defraud is a necessary element of the offense, though not a necessary element of the substantive offense. *Guardallibini v. U. S.*, 128 F. (2d) 984; *Mazurosky v. U. S.*, 100 Fed. (2d) 958; *Farmer v. U. S.*, 223 F. 902.

In addition, the Circuit Court points out that, as a fourth issue, there was a question whether, to effect the objects of any conspiracy, a party thereto committed any of the overt acts charged in Count 12.

In each particular mentioned by the Circuit Court, the instruction given was erroneous and, entirely aside from other reasons given, warranted a reversal of the judgment.

ARGUMENT II.

The Record Does Not Show the Erroneous Instruction Was Solicited by Defendants' Counsel.

The Government claims that the instruction complained of was one asked for and approved by counsel for the defendants. While this statement is made by the Government on page 13 of its brief, however, it is notable that record citation is curiously missing. True, on page 13 of its brief, the Government refers to Record p. 1346 to the effect that there was a discussion, denominated "conference" among counsel with the court immediately preceding the giving of the instruction. It is also fair to assume that in the course of the discussion the argument over the pending objection referring to the matter of relationship of religious liberties to the proffered testimony arose. On page 13 of its brief the Government states that the court gave the instruction to the jury with the consent of counsel for both sides, and refers to pages 402, 404 of the Record, as well as again to page 1346 of the Record. A careful examination of these portions of the Record wholly fails to substantiate the statement of the Government. The Government realizes that, because, lo and behold, after citing the Record above, it appends a footnote at the bottom of page 13 referring, not to the Record, but, to what is apparently the typewritten transcript of the trial proceedings. Surely the Government knows that this is not part of the Record, and under what authority it presumes to insert this footnote is not made clear. Again, it is indicated that the Government realizes its deficiency, because next it seeks to draw some support from the Record, at pages 502, 1125 and 1126, to the effect that this instruction was relied upon throughout the

trial by defense counsel. How this can be construed as being tantamount to a request for the original giving of the instruction is difficult to see. Defense counsel found themselves in the position of having to try the case under certain rulings made by the trial court. They were bound by those rulings in the presentation of evidence, as was the Government, and all that appears on page 502 of the Record is that defense counsel called attention to the ruling of the court now under discussion when a question was asked by the Government inconsistent with the prior ruling of the court. Likewise, at pages 1125 and 1126 of the Record, counsel for the defendants, in guiding its presentation of the defense evidence stated that it had in mind the ruling of the court as to the issue as defined in the instruction. This again shows merely that defense counsel were respecting the ruling made by the court on the issue. Next, on page 16 of its brief, the Government says that defense counsel in argument referred to this ruling of the court. There is no doubt that this statement is true; but what effect does it have, except to show that, naturally and properly, defense counsel were limited by the decision of the court as to the issue as given in this instruction?

Thus, we see that the Government does not establish from the Record the premise of its argument in this respect. As a matter of fact, the court, in giving the instruction, stated that the arguments of counsel on the particular point raised were not necessarily the comment that he, the court, was about to make in giving this instruction. [R. p. 1346.] The most that can be said is that, after the trial court made its ruling, all counsel agreed that it was proper court procedure for the court to ad-

vise the jury as to what his ruling was. This, of course, is far from constituting, as the Government now says, an instruction given at the particular request of the defendants.

(a) Objection to the Erroneous Instruction Was in Fact Raised in the Court Below.

Following the return of the verdict, motion for new trial and motion for arrest of judgment were made and presented by the defendants Edna W. Ballard and Donald Ballard. These were, after argument and the filing of memorandum of points and authorities, denied by the court. [R. pp. 1605-10, incl.]

Attorneys for the Government now contend that objection to this erroneous instruction was not made in the court below, and seek to apply to this case the rule of *Johnson v. U. S.*, 318 U. S. 189, 201, to the effect that a defendant may not pursue one course at the trial and repudiate it on appeal. Unequivocally, the attorneys for the Government assert that objection to this erroneous instruction was not made in the court below and that specifically it was not raised in the motion for new trial and the motion for arrest of judgment (p. 29). Government counsel's mistake and inadvertence in this respect is likely due to the fact that none of the counsel now presenting the present brief for the Government were associated in the trial of the case in the District Court.

One of the then attorneys for the defendants argued the motions for a new trial and for arrest of judgment, and practically the entire argument was predicated upon the contention that the erroneous instruction now complained of constituted prejudicial error and was ir-

remediable. Not only was the oral argument of counsel directed to this contention, but the memorandum of points and authorities filed in support of said motions clearly and unequivocally sets forth this contention. The grounds of the motion for a new trial were ample to support the argument of counsel in this connection. [R. 1605.] The District Judge, in denying the motions, stated that full consideration had been given to both of the said motions.

Said objection to the erroneous instruction was raised through the contention that by giving this instruction the court, in effect, amended the indictment returned by the Grand Jury, that is, removed from the indictment the material accusations of the falsity of representations, and hence the defendants were not tried upon an indictment returned by the Grand Jury.

It will be recalled, and a reference to the indictment itself will readily disclose, that the indictment charged in Paragraph "i" that the representations of the defendants relating to the existence of the Ascended Masters and their experiences with the Ascended Masters and the divine origin of the teachings and precepts of the "I AM" Activity were false and fraudulent. This, in fact, was the basic charge of the indictment, and if we remove it from the indictment, as the Court did, in effect, by this instruction, we find an entirely different indictment remaining, if, in fact, any indictment at all remains.

The defendants repeatedly attacked the indictment on the ground that the allegations thereof on their face revealed that the Government could not and would not attempt to offer proof to sustain said allegations referring to religious beliefs of the defendants, and which allegations in any event could not be legally proved. Despite all

of said motions ,it was not until the trial was partially completed that the Court finally adopted the view as expressed in said instruction. The real effect of this instruction of the Court was to adopt defendants' views and contentions that the indictment was not sufficient. However, even at this stage, the Court failed to assume its full duty, to wit, that of dismissing the indictment and stopping proceedings entirely. The Court continued to tread water, as it were, throughout the rest of the trial, and refused to dismiss the proceedings or direct a verdict of acquittal upon the conclusion of the Government's case and the case in full, even though it went to the extent of repeating the same instructions removing said issues as to verity from the jury. The Court apparently expected to be able to shunt off its responsibility in disposing of the case *in toto*, trusting that the jury would itself acquit the defendants, thus removing all further controversy. However, the jury failed to acquit the defendants, but still the trial court, although evidently disappointed, did not rise to the occasion and arrest the judgment on its own responsibility, but, in lieu thereof, apparently compromised its own convictions by endeavoring to alleviate the result through the suspension of the incarcerating penalties of the relatively light sentence that was imposed.

The law is well established, of course, that a defendant is entitled to proceed to trial upon an indictment returned in the manner provided by law by the Grand Jury. This is a guarantee of the Constitution, as set forth in Article V.

In *Ex parte Bain*, 121 U. S. 1; 30 L. Ed. 849; 7 S. Ct. 781, a defendant was convicted on an indictment returned by the Grand Jury charging him with making false

statements as cashier of a banking association with intent to deceive the comptroller of the currency and the bank examiners. The Court amended this indictment by striking therefrom the allegation of the indictment that intent had been to deceive the comptroller of the currency. The Supreme Court granted a writ of habeas corpus holding that a trial on an amended indictment is void and that the Court had no jurisdiction to proceed. The amendment came about when the Court permitted the indictment to be amended by striking the allegation as to the intent to defraud the comptroller. The theory of the Court was that such a striking did not prejudice the defendant as it was not material to the rest of the indictment. The Supreme Court held, however, that by the Constitution everyone is entitled to be tried on the indictment returned by the Grand Jury, and no court has authority to amend any part of it without reassembling the Grand Jury; that if the Court does so amend an indictment, it is deprived of the power to try the defendant on such amended indictment, and that to hold otherwise would place the rights of the citizen at the mercy of the Court or prosecuting attorney.

This principle of law is recognized in the following cases:

United States v. Norris, 281 U. S. 619, 74 L. Ed. 1076, 50 S. Ct. 424;

Dodge v. United States (2d Cir.), 258 Fed. 300, cert. denied, 250 U. S. 660, 63 L. Ed. 1194, 40 S. Ct. 10;

Stewart v. United States (9th Cir.), 12 Fed. (2d) 524.

But, irrespective of the technical effect of the charge of the Court to the jury, as constituting an amendment to the indictment, let us just consider the effect of this charge upon the case in chief. The Court, in so many words, directed the jury that neither the Court nor the jury had a right to determine whether or not the teachings of the defendants pertaining to their experiences with the Ascended Masters were true or false. In other words, the jury must assume not only that the Ascended Masters exist, but that these defendants had the experiences that are related in their teachings. That being the case, how could the defendants, in any event, have disbelieved the fact of these actual experiences?

Under the circumstances the Court was in error when it stated to the jury that they should nevertheless determine the question "Did these defendants honestly and in good faith believe these things?" If they were true, they could not be false, and, being true, there could be no misrepresentation. The representations contained in paragraph "i" may be summarized by stating that the Government alleged that the defendants did not receive the revelations they contended they received from the Ascended Masters. The indictment is that those representations were false and were known by the defendants to be false. Both of those elements had to be proved by the Government, not simply one of them. Falsity of a representation is an essential element of an indictment in respect to representations complained of.

Haas v. United States, 93 Fed. (2d) 427;
New v. United States, 245 Fed. 710-712;
Crane v. United States, 259 Fed. 480-482.

If we interpret the Court's remarks as taking from the jury the question of whether or not the representations were true or false, then the Government was excused from proving an essential element, to wit, the falsity of the representations. If we assume from the statement of the Court that the jury was to consider all of the teachings and revelations of the Ascended Masters true, then it follows the Government did not prove an essential element of the indictment, to wit, that they were false. Consequently, however you view the charge of the Court, whether as a charge that the representations were not to be gone into or as a charge that they were true, the Government could not possibly have proved a case at the conclusion of the trial.

On page 30 of its brief, the Government now contends that the respondents were not deprived of the opportunity to offer any evidence which they wished to offer; in other words, the Government say that, despite the ruling of the trial court in removing the issues of truth or falsity of representations, the defendants could have disregarded this ruling of the Court and, nevertheless, presented evidence in the trial court as to the truth of the representations which the Government had alleged to be misrepresentations. For defendants to have attempted to do so after the ruling of the Court, as expressed in the instruction given midway in the trial, would at least have been contemptuous and insolent. Moreover, it would properly have been subject to objection by the Government of the Court on its own motion on the grounds of immateriality, in view of the law of the case as enunciated by the Court. That this was the attitude of counsel for the defendants, is expressed in the statement made by Mr. Cannon upon

his conclusion of direct examination of Mrs. Ballard, when he stated as follows:

> "Now, if the court please, Your Honor has heretofore stated as the law of the case that the jury are not going to be permitted to speculate on the actualities of these incidents of the Ascended Masters of supernatural beings referred to in the literature and testified to by various persons who have taken the witness stand. You further stated, as the law of the case, that no attack can be made on whether or not these things happened and the jury are not to be allowed to pass upon the verity of those experiences with the Ascended Masters or divine beings.
>
> "Accepting those statements of the court as the law of the case, the defense has decided to ask Mrs. Ballard no further questions on direct examination. She is the admitted leader of this activity so far as the persons on trial are concerned." [R. pp. 1125, 1126.]

In the footnote 11 to page 30 of the Government's brief, it is argued that, because four codefendants were acquitted, this fact shows that the jury adjudged only the good faith of the defendants and not the verity of the doctrines asserted by them. This is a purely gratuitous assumption on the part of the Government. There is no indication in the verdict as to whether the jury followed the instruction of the Court or not, but, assuming that the jury followed the instruction of the Court and did not judge the verity of the doctrines, but only the good faith of the defendants, this merely demonstrates the importance of the error committed by the trial court in removing the pleaded accusation of falsity from the indictment.

ARGUMENT III.

Defendants Were Entitled to be Tried Under the Indictment as Found by the Grand Jury and an Indictment Which Does Not Abridge Their Constitutional Rights.

A. There Is No Merit in the Contention That the Judgment Should Be Affirmed on the Assumption That All Issues of False and Fraudulent Representations Were Not Withdrawn From the Jury.

This argument of the Government proceeds upon a theory that the Court may have submitted less than the indictment charged, but that which was submitted constituted an offense. However, this is not the situation. The entire indictment with all of the asserted misrepresentations was read to the jury, and as to each of those representations an essential element of proof was not required, to wit, proof that the representations were false. [R. 1545-1603.] It is now assumed by the Government that there were representations of fact disassociated from representations concerning religion, and that *upon those former representations the jury founded a conviction.* The Government contends, and in fact relies upon the proposition that in a trial under the mail fraud statute, all representations need not be proved to sustain a conviction. In fact, it points out that the jury was so instructed. By what reasoning the Government asserts that it was upon so-called representations of alleged fact that the jury predicated its verdict does not appear. How can the Government say that it was upon those allegations of fraudulent representation, rather than upon others?

The Government argues that the Circuit Court of Appeals found no other error in the conduct of the trial court (other than the erroneous instruction) and, further,

that "there was substantial evidence to support the verdict if the issues had been properly presented to the jury." (Government's Brief p. 20.) No such ruling is found in the decision of the Circuit Court. The decision found that there was substantial evidence that the defendants schemed to make some, if not all, of the representations set forth in paragraphs 1 to 18 of the indictment, and that some, if not all, of the representations which they schemed to make were false. The Court then said "Whether such representations were false or true was a question which should have been submitted to the jury." Obviously, the Court did not hold that there was substantial evidence to support the conviction, but merely pointed out that there was some evidence both ways as to whether or not the representations were true or false, and that being so, it was the province of the jury to make a determination in this respect. Hence, when the Government seeks to extend to this portion of the decision of the Circuit Court a holding that the conviction was supported by substantial evidence, the Government is seeking to write its viewpoint into the decision by giving a meaning to the words of the decision which is totally incompatible with its context. Neither the Government, the Circuit Court, nor anyone can determine whether the jury predicated its verdict upon what the Government asserts are allegations of fact, rather than upon alleged falsity of other representations. Therefore, assuming the distinction actually exists which the Government seeks to make between the various representations, we challenge the Government (in view of the trial court's instruction that only one misrepresentation need be proved), to point out the representation, or representations upon which the jury rested its decision. This must be done before the argument made can be considered.

B. The Representations All Related to Religious Matters, and the Attempted Distinction Between Representations of Fact and Representations Concerning Religious Concepts Does Not Exist.

The Court charged the jury by the erroneous instruction that the truth or falsity of the representations of the defendants, as pertaining to religious beliefs, experiences with the Ascended Masters, or the verity of the existence of the Ascended Masters was not in issue. The Government now seeks to distinguish between the representations, alleged in the indictment, Subdivision (i), 1 to 18, inclusive, and asserts that some were not representations dealing with or pertaining to religious matters. However, a mere reading of the representations now contended to be representations of fact shows that they were definitely within the religious category. On page 33 of Government's brief, it is stated that representations as to healings were not representations as to religious fact, but the indictment charges not that the Ballards claim that they healed, but that they claim they had the power to heal by reason of supernatural attainment. [R. pp. 12-13.] Moreover, all of the evidence shows that the representations pertaining to healing were representations to the effect that the Ascended Masters had, through dictations informed the Ballards that they had effected numerous cures; that healing came through application of the I AM teachings. Clearly, these representations were not distinguishable from other representations pertaining to the religious matters.

The Government also states in its brief that representations made by the defendants that they had actually encountered certain experiences were not of religious con-

cept, but of fact. This is patently not so. The Court, specifically, in the instruction complained of, told the jury that they were not to consider the truth or falsity of the experiences claimed by the defendants to have been had by them with the Ascended Masters. The Court further stated:

> "Whether these incidents actually happened or not is not for your consideration. The religious beliefs of these defendants are not an issue in this court and not for your consideration. The issue is: Did these defendants honestly and in good faith believe these incidents actually happened? If they did, they should be acquitted. If these defendants did not believe these incidents actually happened and did not believe that Jesus came down and dictated, or that Saint Germain came down and dictated and did not believe the representations and statements which they wrote nor the statements and representations which they preached and used the mails for the purpose of getting money or other things of value, you shall find them guilty." [R. p. 1576.]

As to the Government's reference on page 34 of its brief to the representations as to experiences in the books particularly "The Magic Presence" we point out under argument IV, Subd. 4 (pp. 60 to 71) these experiences were of a supernatural nature and the truth or falsity thereof were withdrawn from the jury.

The Government states that the representation that records sold had salutary qualities, whereas the defendants well knew that the records were man-made, and had no ability to aid the achievement of salvation, was a representation of fact. This, again, is patently not a representation of fact as distinguished from religious con-

cepts. Moreover, the indictment alleged the false representation as being that the records "would bestow upon said purchasers great blessings and rewards in their aim to achieve salvation." [R. p. 17.] No allegation of the indictment refers to the preparation of the formula nor difficulty of such preparation upon which the Government predicates its claim that this is a representation of fact. No proof was ever offered that the defendants claimed the records were not man-made. The whole question was a religious one—whether they would give the members spiritual assistance. Thus, we can see that there is no distinction, as attempted by the Government, between so-called representations of fact and so-called representations as to matters of religious beliefs. As a result the effect of the instruction was to relieve the Government of its burden of proving that the representations *or any of them* were false.

C. The Indictment Does Not Charge Misrepresentation of Belief, as Maintained by the Government.

This contention of the Government is based upon the proposition that the indictment alleges misrepresentation of belief rather than misrepresentation of other facts unconnected with a state of mind. The two things, we submit, are quite different. For example, to charge one with falsely representing that a document is genuine is different from charging him with representing that he believed the document to be genuine. A perusal of the indictment should disclose whether the Government's contention is sound or whether in fact the allegations of the indictment charged misrepresentations of fact.

With the contention in mind, we wish to refer to the indictment to ascertain whether that is in fact true in

respect to the representations therein set forth. It is alleged that the defendants schemed that they would "falsely and fraudulently represent to the persons intended to be defrauded, in substance and fact, among other things, as follows" [R. p. 8]:

(a) That Guy W. Ballard had attained a supernatural state of immorality; [R. p. 8]

(b) That he had been selected and designated as a divine messenger; [R. p. 8]

(c) That he, Edna Ballard and Donald Ballard had been selected as divine messengers through whom the ascended masters would communicate; [R. p. 9]

(d) That they were the only ones through whom the spiritual teachings of St. Germain and other ascended masters would be given to the world; [R. p. 10]

(e) That Guy W. Ballard and Edna W. Ballard and Donald Ballard had, by reason of supernatural attainments, power to heal ailments; [R. p. 12]

(f) That they had divine and supernatural ability to bring forth money, riches and other material needs; [R. p. 13]

(g) That certain magazines and musical compositions were divinely inspired; [R. p. 15]

(h) That the purchase of certain charts would bestow blessings and rewards upon the purchasers; [R. p. 17]

(i) That the followers of the movement, by following its principles and precepts, would, prior to death, achieve the "ability to make their actual physical ascension in their physical, tangible bodies, and would, in fact, ascend and not die.' [R. p. 19.]

It is readily observed that the charge is not that the defendants represented that they believed in the foregoing things. The indictment charges that the foregoing representations are not true. It is claimed that because the indictment also contains an allegation to the effect that the defendants well knew the falsity of the representations (Footnote 8, p. 22, of Petition), that the representation is turned into one of belief; however, it seems quite apparent that the portion of the indictment quoted in the petition merely alleges knowledge of the falsity, and goes to the issue of fraudulent intent. It does not, in anywise, alter the allegation that the representations were of fact and that the Government charged that the facts represented were untrue. It now is contended that to require the Government to prove them untrue will transform the trial into a heresy trial. It is not an answer to the contention that certain proof required by law is absent, that to require such proof will transform the trial into a heresy trial. The Government cannot commence what constitutes a heresy trial and then avoid proof by pointing to its repugnance to the American Constitution. The fact remains the allegation that one following certain principles will physically ascend and not die, is a representation of fact. It was the Government (now complaining) which formulated the indictment. If it does not have information as to the facts concerning ascension and immortality, it should not have formulated an indictment requiring it to make such proof.

We do not question that a state of mind may itself be a fact which may be false and fraudulent, but the opinion of the Circuit Court of Appeals does not overlook that principle, nor is it inconsistent with the case of

Seven Cases v. United States, as claimed. That case involved the validity of the Pure Food Law in so far as it related to labelling. It was contended that the statute, in so far as it forbade labels on articles containing statements regarding their curative effects which were false and fraudulent was uncertain and consequently invalid. The statute was attacked on the ground that it entered the domain of speculation and, therefore, violated the "due process" clause. It was contended that an "owner has the right to give his view regarding the effect of his drugs." It was in regard to this contention that the court stated "state of mind is itself a fact, and may be a material fact, and false and fraudulent representations may be made about it." In other words, the statement of the court has reference to a situation where one states his opinions, not one where representations of other facts are made. Somewhat the same situation prevails in the *Knickerbocker Merchandising Co. v. U. S.,* 13 F. (2d) 544. That case merely holds that where one makes a promise, the promise is of a fraudulent nature if, when made, the person had no intention to perform. Both differ from the case at bar because here the Government alleged that certain facts did not exist and the representations alleged in the indictment to have been made are not as to a defendant's state of mind, his views, or opinion.

Thus, we see that the indictment is that defendants made certain representations which were false and which were known by the defendants to be false.

Both of those elements had to be proved by the Government, not simply one of them. While the element of knowledge may be proved by showing what is apparently accepted as its equivalent—that the statement is recklessly

made without investigation as to its truth or falsity—the falsity of the representation is an essential element of an indictment and of the proof under it. It seems never to have been questioned but that some at least of the representations charged to be false must be proved false, the only question having been whether the Government must prove that substantially all of the representations in an indictment are false. (*Mathews v. U. S.*, 15 F. (2d) 139 (8th); *Havener v. U. S.*, 49 F. (2d) 196 (10th).)

In *Hass v. U. S.*, 93 F. (2d) 427, it was questioned whether an indictment was sufficient which, while alleging the representations to be false, apparently did not allege specifically wherein they were false. The court upheld the indictment, stating that an allegation that a representation was false was a sufficient negation of its truth.

In *West v. U. S.*, 68 F. (2d) 96 (10th), a mail fraud action, where the defendants were charged with selling a compound falsely representing that it would assist in the cure of syphilis, the court instructed the jury as follows:

> "So the whole case boils down to a question of their intent or honesty of purpose in making the representations they did in those letters and in selling and distributing this so-called chloride of gold and sodium (the compound involved) as a cure for blood disease or syphilis . . . ."

It will be noted that the foregoing instruction is somewhat similar to that criticized by the Circuit Court in the case at bar, although it is not as strong because it did not, as in the case at bar, direct a verdict of guilty if the jury did not believe the remedy had efficacy. The court held that if the compound was a cure or remedy,

as represented, then no offense, as charged in the indictment, was committed by defendants, and that the burden was upon the prosecution to prove by substantial evidence that it was not a cure or remedy, before the court could submit the case to the jury. The court further held that if the representations were in fact false, even so, the defendants would not be guilty unless they knew them to be false or acted with reckless indifference as to their truth or falsity; that in submitting only this issue to the jury and assuming that the compound was not, in fact, a remedy, the court had erred as it had failed at any point in its instructions to tell the jury that if the remedy was an effective one, defendants could not be convicted. The judgment was reversed on the ground that the instructions were improper.

The law is settled that falsity of representations is an element which must be proved by the Government. The Government should not be allowed to escape this burden by claiming that to make proof is to transform the trial into a heresy trial, or that such proof would be difficult. The indictment was prepared on behalf of the Government and not by the defendants, and if the Government seeks to charge that the Ascension as taught by the I AM Activity is false and that it is not true that Ascended Masters will appear in this country, it, by the filing of such an indictment, thereupon takes upon itself the burden of showing that those things are false.

D. Under Either Interpretation of the Indictment the Constitutional Rights of the Defendants Would be Abridged.

The Government criticizes the position of Justice Denman on denial of rehearing. It claims that the opinion fails to recognize that "miraculous events should not readily be made the subject of proof," and that the principle should be adhered to "that such matters are not questions of fact to be tried in court." Without answering the logic of that position, the Government asserts, in effect, that Judge Denman's opinion divorces logic from reality. (Footnote, p. 29, Gov. Brief.) That, we submit adequately defines the Government's position. If an indictment such as the one in the case at bar, charges the falsity of religious teachings, then even the Government seems to concede that it has the burden of proving that falsity. If it charges that the defendants did not believe in the religious tenets which they taught, there is no escape from the logic of Judge Denman's opinion that defendants must be permitted to show, if they wish, the occurrence of the miraculous events as such proof bears upon the question whether or not the defendants believed. In either case, the Government finds itself in the position of attempting to overthrow certain religious dogma. This, according to the opinion of this court in *Watson v. Jones*, *supra*, 80 U. S. 679, the Government should not do.

We respectfully urge that it was never intended by the Congress of the United States when it enacted the mail fraud statute that it be used by the law enforcement agencies to whittle away religious liberty; that it

was never intended to be used to suppress and dissolve minority religious sects by means of charging either that their tenets were false, or that they did not believe what they taught or professed to believe. Perhaps in some cases this may result in excesses and abuses, but, as pointed out in the *Cantwell* case (*Cantwell v. State of Conn., supra,* 310 U. S. 295) the nation has ordained, in the light of history, that the preservation of religious liberty is worth the risks that in some instances excesses, villifications and even false statement may be tolerated. As is observed in that case, the tenets of one man may seem the rankest error to his neighbor. Consequently, as a result of the divergency in belief in this country among our peoples, it is impractical to allow those of one opinion to test the veracity of the tenets of another through direct charge of falsity or to test them indirectly by means of a charge of bad faith.

Prior to and during the trial of the action, the defendants objected that the indictment here did not state a public offense [R. pp. 64-77; 111-113] and overruling of those objections is assigned as error. [R. p. 191.] We submit that whether the indictment be interpreted as we contend it should be, or be given the construction sought by the Government, that in neither case does it state an offense within the purview of the mail fraud statute and that defendants' objective should have been sustained. To reach any other conclusion would be to sanction and countenance a violation of the First Amendment to the Constitution.

E. The Indictment Against the Defendants Alleged a Scheme to Defraud by Making Certain Misrepresentations.

It is contended by the Government that the conviction was based upon a finding of the jury that the defendants propagated a religious movement in bad faith, and that the Circuit Court adopted an erroneously narrow construction of the mail fraud statute when it held that the indictment charged a scheme to defraud by misrepresentations and required that at least some of them be proved. We do not question, and have never questioned, that an indictment can be drawn which charges a violation of the mail fraud statute, without including a charge that there existed a scheme to obtain money by false or fraudulent misrepresentations. We do maintain, however, and an inspection of the indictment shows, that it alleges the formation of a certain scheme to defraud, which scheme was to obtain money by false and fraudulent representations. [R. pp. 4, 5, 6, 8.] In most instances, direct reference is made to the 19 representations set forth specifically in the indictment and in detail at pages 9-20 of the record. [R. pp. 3 and 5.] Pages of the indictment are occupied with detailed and specific statements of the representations which the defendants allegedly schemed to make. The trial was had upon the theory that the scheme alleged was one to obtain money by means of false representations detailed in the indictment. For the first time, on the petition for rehearing in the Circuit Court of Appeals, and in petition for certiorari, the Government suggests a

new theory, to wit, that the scheme, instead of being one to obtain money by means of the representations set forth, was predicated upon a theory of fiduciaries defrauding their beneficiaries. In other words, the Government now wishes to ignore, apparently as surplusage, almost the entire indictment. It must, however, be borne in mind that it is the established rule that it is not sufficient merely to allege a scheme to defraud, but that the scheme must be stated with all such particulars as are essential to constitute the scheme or artifice and to acquaint the defendant with what he must meet on the trial. (*U. S. v. Hess*, 124 U. S. 483.) The particulars of the scheme are matters of substance and must be set forth with sufficient certainty fairly to acquaint the defendant with the charges against him. (*Savage v. U. S.*, 270 F. 14, 8th.) The scheme so alleged must be substantially the scheme proved by the Government or a conviction will be set aside. (*Hass v. U. S.*, 93 F. (2d) 427; *Brown v. U. S.*, 146 F. 219, 8th.)

In view of the foregoing rules of law, the indictment can only be interpreted as one alleging a scheme for obtaining money by making some of the numerous misrepresentations set forth in the indictment, and defendants were entitled to, and did assume it was concerning such a scheme that proof would be offered. It is not contended that the Government must prove the existence of all alleged misrepresentations. However, it is contended that, where the scheme alleged in the indictment is one to obtain money by misrepresentations, then some at least of those representations must be proved false. An inspection of the cases cited by the Government will show that they do not conflict with the foregoing statement or with

the decision of the Circuit Court of Appeals in case at bar. They represent cases where a fiduciary has defrauded a beneficiary through a breach of trust. Thus, in *U. S. v. Buckner,* 108 F. (2d) 921, Buckner, as a member of a committee of bondholders, intentionally misused the money collected to further their cause and also used his position of trust for the purpose of making a profit for himself by the use of inside information. *This was the charge which was made against him in the indictment.* In other words, he was charged under an indictment which alleged a scheme amounting to a breach of trust, and he was tried on the scheme laid in that indictment. Similarly, in *Glover v. U. S.,* 125 F. (2d) 291, the indictment charged that the defendant, a public official, devised a scheme corruptly to obtain improvements upon lands purchased and owned by him by using state funds for their improvement. In *U. S. v. Groves,* 122 F. (2d) 87, one defendant, who was a director of the corporation involved, was charged with conspiring with others to buy stock and resell it to the corporation at a higher figure. Thus, it appears, from an inspection of the cases cited, that in each and all the scheme charged was a scheme to defraud by misuse of a trust relationship. All of the cases cited by the Government relative to a fiduciary or a trust relationship are cases wherein the indictment specifically charged the violation of the mail fraud statute to have been predicated upon a breach of such relationship. The indictments do not merely allege a scheme to defraud, but specifically and in detail set out the particulars of the scheme. It is true that misrepresentations are absent, but in none of the cases and in no case of which we have knowledge has it ever been held that merely to allege in an

indictment that an organization has been formed in bad faith constitutes a sufficient charge under the mail fraud statute.

Hence, while we do not question that an indictment may be formulated based upon breach of trust, we assert that this is not such an indictment, but is one predicated entirely upon the charge that the defendants schemed to defraud by making certain misrepresentations. The trial was devoted to testimony related to these representations. To approve at this late date the Government's new contention that the indictment is really one charging the defendant with a breach of fiduciary obligations would be to deny them the right given to them under the law to know the nature of the charge against them before going to trial. We further submit that if the indictment is stripped of the portions which the Government now in effect maintains were surplusage, sufficient would not remain to constitute a proper indictment under the mail fraud statute.

Furthermore, assuming the Government's contention to be correct, the instruction would still constitute reversible error as the argument is based upon the same proposition used by the Government in connection with its other arguments, to wit, that the jury found against the defendants as to the particular facts necessary to a conviction under the theory of the Government.

ARGUMENT IV.

The Evidence Completely Fails to Support the Allegations of the Indictment by Evidence of a Substantial Character.

We believe that this appeal presents one of the most important cases to be decided by this Court. It brings squarely before the Court, we believe for the first time, the right of the government of the United States to prosecute leaders of a religious sect, having a large membership, under the mail fraud statute on the ground that they are not teaching or preaching the religious tenets of their organization in good faith. The appeal was not taken in this case because the defendants, or either of them, found it necessary to avoid serving a sentence in jail. It was taken because they believed and, we submit, rightfully so, that the mail fraud statute of the United States was not enacted and should not be used as a means to persecute a religious sect.

The right of religious freedom is one of the foremost and basic of the guarantees secured by the Federal Constitution—one of the four freedoms for which we are fighting. In respect to no other right guaranteed under the Constitution has the Court been more zealous in affording protection. As said by Chief Justice Stone in the dissenting opinion in the recent case of *Jones v. City of Opelika*, 86 L. Ed. Advance Opinion 1174, concerning freedom of religion and speech:

> "* * * the Constitution, by virtue of the First and the Fourteenth Amendments, has put those freedoms in a preferred position."

It has been called the "crowning glory" of American freedom. (*Cline v. State*, 9 Okla. Cr. 40, 130 Pac. 510.)

The courts of the various states of the Union, as well as of the United States, have been constantly on the alert and diligent in safeguarding this right; so diligent; in fact, and so careful, that they have held that all doubts are to be resolved in favor of religious freedom. Conduct which would not otherwise be tolerated, is sanctioned to safeguard it. Legislators have been warned that they should be reluctant to enter a doubtful zone where the result might be an impairment of it. (*Ex parte Dart*, 172 Cal. 47, 155 Pac. 63-66.)

In *Watson v. Jones*, 80 U. S. 679, 20 L. Ed. 666, the Supreme Court states at pages 728-9:

> "In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations, to assist in the expression and dissemination of any religious doctrine * * * is unquestioned."

See, also:

Knowlton v. Baunhover, 182 Ia., 691.

Rather than permit the possibility of persecution and encroachment upon this liberty, the people have deemed it more expedient to permit exaggeration, vilification and

like excesses to occur—even false statement. So states the Supreme Court in *Cantwell v. State of Connecticut*, 310 U. S. 295 at 310, 84 L. Ed. 1213:

> "In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persaude others to his own point of view, *the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state; and even to false statement.** But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, the liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy."

It has been recognized, too, that religious liberty is a peculiar right in that while all seemingly believe in it, where a particular case is involved, bigotry and prejudice blind those who profess themselves to be most anxious to protect its existence. In *Cantwell v. State of Connecticut, supra,* at page 310, the Supreme Court states, in connection with the foregoing:

> "The essential characteristic of these liberties is, that under their shield many types of life, character, opinion and belief can develop unmolested and unobstructed. *Nowhere is this shield more necessary than in our own country for a people composed of many races and of many creeds.*"

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*All italics in this brief ours.

In *United States v. Schwimmer*, 279 U. S. 644, at 654-5 73 L. Ed. 889, it is said:

> "* * * if there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought—not free thought for those who agree with us, but freedom for the thought that we hate."

In *Minersville School District v. Gobitis*, 310 U. S. 586, 84 L. Ed. 1375, the Supreme Court of the United States points out that religious freedom, gained as a result of long strife, is not to be lost by failure on the part of the Government to protect it.

In the past, when certain liberties have been guaranteed to us by the Constitution, that liberty has rarely been taken from us by any comprehensive legislative enactment. Slight encroachments have been tolerated, followed by greater encroachments, predicated upon the acceptance of the first, until, to use the language of the Court in *Ex parte Dart, supra*, the freedom has been "gnawed and impaired." It is particularly true of religious freedom. No one contends that the right to practice religion is not subject to restriction by the police power of the state, but that balance between religious freedom and the exercise of police power is so fine that unless great care is taken the former will be destroyed by a seemingly proper exercise of the latter. As said in *Associated Press v. National Labor Relations Board*, 301 U. S. 103, at 141, 81 L. Ed. 953: If the people desire to preserve the liberties granted to them by the First Amendment—

> "* * * let them withstand all beginnings of encroachment. For the saddest epitaph which can be

carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time."

In stating at the outset that in our opinion this is a case of first impression we are not unmindful of the existence of certain cases upon which the Government relies. (See *New v. United States,* 245 Fed. 710; *Crane v. United States,* 259 Fed. 480; *Post v. United States,* 135 Fed. 1.) But we do contend that the situation in those cases differs so widely that they are no authority in this case. We do not maintain that those cases were erroneously decided, but we respectfully submit that in attacking a newly organized religious sect as the Government is attempting to do in this case, a definite foundation is being laid for the encroachment upon the right of religious freedom. This case represents a "streamlining" of the age-old evil of religious persecution. Its novelty lies in the fact that it can be employed without seemingly infringing on anyone's constitutional rights and without the use of the taxing power so often employed in this connection. (See *Jones v. City of Opelika, supra.*)

The mechanics employed are to charge the leaders of a new religious order with teaching false concepts in which they do not believe; they are afforded a jury trial—everything is seemingly regular. However, it becomes readily apparent how difficult it is for those whose religion differs greatly from the orthodox, whose tenets may seem unbelievable to the average mind, to prove to a jury of contrary belief, that they actually believe what they teach. And by the same token a jury of contrary beliefs must almost invariably come to a conclusion of bad faith, since they cannot reconcile their orthodox belief with those

of defendant. This trial illustrates that fact. It resulted in constant assaults upon the tenets of the defendants, constant mockery of them—fun was made of them—the Ascended Masters were compared to the characters in the funny paper—they were called upon for manifestations. The jurors became confused because manifestations had not been forthcoming. [R. p. 965.] All of the foregoing matters will be gone into more fully hereinafter.

Apostates have been available from the commencement of the Christian religion, and, in the course of the formation of almost all of them, ready to testify against the leader or leaders; ready to say that they taught that which they did not teach, or to misconstrue what was actually taught.

Upon the conviction of defendants on a charge of this kind we find the final step in the completion of religious persecution by the Government. Probation provisions were submitted by the Government and adopted by the Court that the defendants shall not conduct any meetings in which they claim to be accredited messengers of Divine Entities; that they shall not make any public representations regarding the matter of ascension; and that they shall refrain from any representations regarding Ascended Masters. Just imagine that! In a country professing freedom of religion, whose courts have specifically stated that that freedom includes the right to spread and propagate one's beliefs, the defendants are prohibited during such period as the Court should see fit (in this case one year) from making any statements regarding the matter of ascension.

In an endeavor to support the allegations, the Government introduced, in addition to the voluminous records

containing the teachings, certain witnesses who gave their interpretation of the teachings and also testified that the defendants had made certain statements concerning them which it will be seen, from a comparison therewith, are inconsistent with what was uniformly taught. We submit, in connection with this testimony, that where, as here, the tenets of the religion are expounded and disseminated by books and magazines which reach the hands of the followers, the Government must support its allegation that the defendants made false and fraudulent representations concerning ascension, healing, divine inspiration, etc., by showing false representations in those teachings, and cannot prove the existence of a scheme to defraud by isolated statements of apostates. Nor can the Government support the verdict in this case even by showing the existence of misrepresentations on the part of the defendants, unless those misrepresentations are so extensive in character and so often repeated that one can conclude therefrom that they are the result of a scheme to defraud through the use of the mails. (*McLendon v. United States*, 2 Fed. (2d) 660—6th Circuit.)

The *McLendon* case was followed in *Pelts v. United States* (2d Circuit), 54 Fed. (2d) 1001, at 1005, wherein it is stated:

> "* * * Not every representation constitutes a scheme to defraud. The issue is not whether any statement is false or true, *but whether the scheme as a whole is to defraud.* McLendon v. U. S., 2 F. (2d) 600 (C. C. A. 6); Faulkner v. U. S., 157 Fed. 840 (C. C. A. 5)."

An examination of the indictment shows that as to its charging allegations it is couched in most general

terms. Subdivisions "a" to "h," inclusive, merely refer to the establishment of the organiaztions of the "I AM," the establishment of reading rooms, the publication and manufacture of books and religious articles, the radio broadcasting of programs, and the solicitation of members for funds for the carrying out of the Activity. The alleged scheme and plan to defraud is particularized in subdivisions 1 to 20 of paragraph "i". Thus, the indictment itself is predicated upon the charges set forth in said subdivisions of paragraph "i", and we will proceed to treat specifically and fully with said subdivisions. Before doing so, however, we do wish to call to the Court's attention the extreme lack of certainty and the extreme lack of definiteness with which the indictment charges the inception and development and the carrying on of the alleged scheme and plan. May we add before proceeding, in the analysis of the evidence we will indulge in certain comparisons to other religions and have made references to the Bible. We do so with the utmost respect and without any thought or sense of questioning or ridiculing any other beliefs, teachings or doctrines.

The indictment alleges the defendants schemed:

(a) To induce to become members of "I AM" and to form "I AM",

(b) To form Saint Germain Foundations,

(c) To induce defrauded persons to give money and property to Saint Germain Foundation,

(d) To form Saint Germain Press,

(e) To induce people to be defrauded to purchase from Saint Germain Press,

(f) To sell to people to be defrauded, pictures, charts, etc.,

(g) To establish reading rooms and to conduct meetings and classes and lectures at said reading rooms *re* principal precepts and doctrines,

(h) To conduct radio broadcasts for instruction in the precepts and doctrines of the "I AM",

(i) It is alleged that as a part of the aforesaid scheme and to induce persons to become members, obtain money, sell the aforesaid charts, books, etc., the defendants made certain misrepresentations which are set forth in subdivisions 1 to 20 of sub-paragraph (i).

The allegations of said subdivisions 1 to 20 of subparagraph (i) are sometimes repetitious. For convenience, it is much simpler to group some of these subdivisions and to point out, in grouping, the particulars in which such allegations are unsupported by the evidence. These groupings will be gathered under the following subject matters referred to therein:

1. IMMORTALITY (Subdivisions 1 and 6);
2. DIVINE APPOINTMENT AND SELECTION (subdivisions 2, 3 and 4);
3. TEACHINGS CONDUCIVE TO ATTAINMENT OF EVENTUAL SALVATION (Subdivision 5);
4. BOOKS, MAGAZINES, LITERATURE AND OTHER ARTICLES AND PARAPHERNALIA CONDUCIVE TO EVENTUAL SALVATION (Subdivisions 10, 11 and 14);
5. HEALING (Subdivisions 7 and 8);

6. PRECIPITATION (Subdivision 9);
7. CATACLYSMS (Subdivisions 12 and 16);
8. DIVINE INSPIRATION AS TO SAINT GERMAIN'S PICTURE (Subdivision 13);
9. PROMISE OF APPEARANCE OF ASCENDED MASTERS (Subdivision 15);
10. FORBIDDENCE OF CRITICISM (Subdivision 17);
11. PROMISE OF ASCENSION (Subdivision 18).

Subdivisions 19 and 20 are general allegations to the effect that all of the representations in subdivisions 1 to 18, inclusive, were knowingly and intentionally fraudulent.

(1) IMMORTALITY (Subdivisions 1 and 6).

Subdivision 1 alleges that the defendant Guy W. Ballard had attained a supernatural state of immortality which condition enabled him to conquer disease, death, poverty, old age and misery. It further alleges that Guy W. Ballard did, in fact, die December 29th, 1939.

Subdivision 6 alleges that the defendants represented that Guy W. Ballard, during his lifetime and Edna W. Ballard and Donald Ballard had attained a supernatural state of self immortality by reason of which they were free from ailments common to man and were able to conquer disease, death, poverty, old age and misery, and which power the defendants were able to and would transmit to others willing to pay therefor. We will, in subsequent paragraphs entitled "Healing" and "Precipitation" treat with the alleged representations in connection with the conquering of disease and also their alleged representations in connection with poverty and misery.

Immortal, of course, means "Not mortal, imperishable, destined to live in all ages of this world." We assume that the Government meant by this charge that the defendants and Guy W. Ballard represented that they were going to live forever in their present physical bodies. This is indicated by the fact that in subdivision 1 the Government mentions the fact that Mr. Ballard died on December 29, 1939.

The record is wholly lacking in any evidence to the effect that these defendants or Guy W. Ballard represented they would live forever on this earth in their present physical bodies. The Ballards never represented that by reason of the attainment of a supernatural state or a state of immortality they had power to do any of the things as claimed by the Government. In fact Mrs. Ballard made it very clear to the students that they had no such power.

She stated:

> "* * * never let any of us for one second ever dare to think, say, feel or do anything that would try to make others feel or believe that we are the Power of Understanding which is helping to set the student free. The ONLY POWER in this Activity or any other that ever did anything good for anyone, is the Divine Activity of Life which is the 'Mighty I AM Presence' and no human being in this Activity shall ever take the credit in thought, feeling, word or act * * *
>
> "We are only privileged to carry the 'Cup of Light' which the Ascended Masters have entrusted to our care! We shall oppose everybody and everything who at any time openly or under cover attempts in thought, feeling, word or action, to give credit to

> any one's personality, *not even my own*, for bringing this Ascended Master Light, Instruction and Freedom of the 'Mighty I AM Presence' to mankind and holding this Light until they are free." ("The Voice"—April, 1940, pp. 36-37, Exhibit 60.)

These defendants did believe, and teach, that they, as well as all other persons, were immortal in one sense in which that term is used. They believed that

> "every individual has the Divine Flame of Life Within him, and–That God–part of him–has dominion wherever He moves in the universe." ("Unveiled Mysteries", p. 17.)

They further believe in a law of re-embodiment which encompasses continued re-birth of the spirit in human form until it has attained a certain perfection, at which time ascension will occur. It is possible to have attained a certain power by the accomplishment of good during previous embodiments which can be exercised during an existing embodiment. ("Unveiled Mysteries"—pp. 17-18.)

The doctrine of re-embodiment is similar to the doctrine of reincarnation which is widely accepted and is an integral part of Theosophy. Theosophists maintain it is believed in by a full one-half of the world, taught in the Bible and assented to by Jesus. (*Phelan's "New Handbook of All Denominations,"* p. 290.) Further that:

> "Through the experiences of its many incarnations the soul is able to progress to the stature, nature and dignity of Godhood and thus to emancipate itself from the necessity for further pilgrimage. The soul gets nothing by favor but everything by merit." (p. 289.)

Saint Germain disclosed to Mr. Ballard certain of his former embodiments and those of his wife and Donald in which they had held many high positions unswervingly used by them for the accomplishment of good, right and justice.

In an endeavor to support the alleged representation of immortality the Government quoted from one or two discourses by the Ascended Masters to the effect that the students

> "one day will know what these Precious *Messengers have meant to you and to humanity.* One day you shall know who they are. You do not know yet." (Exhibit 42, p. 8—Discourse by "Mighty Victory")

First of all it should be noted that the quotation is from a discourse by an Ascended Master. It is not a statement or representation by any of the Ballards. Under the Court's instructions, the Master's discourses are to be deemed correct and true. In this discourse there is no statement or claim that the Messengers are immortal. Precisely what is meant by the above statement of the Ascended Master "Mighty Victory" is, of course, not for us to say. In view of the teachings of Saint Germain the most obvious explanation would be that by reason of the amount of constructive service rendered by the Messengers throughout the centuries, and during this embodiment, in an endeavor to spread the teachings, they have been of greater assistance to humanity than was then known to the listeners.

Another quotation from discourses used during the trial was from one by "Beloved Eriel" wherein he states:

> "These Messengers make no mistakes." [R. p. 1149.]

The Government would seek to imply from this statement that this is a representation of immortality. Isn't it obvious that the sense in which this is used merely is that the messengers make no mistakes in recording and dispensing to the public the discourses of the Ascended Masters? Isn't it precisely similar to the belief of the Catholic Faith that the Pope, the visible head of the church and the vicar of Christ on earth, cannot err when he teaches a doctrine of faith or morals? Isn't it, as Mrs. Ballard stated, when asked about this discourse:

> "* * * he is speaking from his octave of light—not from this world of human opinion." [R. p. 1149.]

Another instance which the Government cites regarding its allegation of immortality is the following from a discourse of Saint Germain:

> "The body of this Messenger is a part of Myself. The body of your Beloved Lotus (referring to Mrs. Ballard) is a part of the Goddess of Justice. The Goddess of Justice is the Feminine Part of Myself." ("The Voice"—May, 1939, p. 32, Ex. 49.)

Again it is not for us or for the jury to interpret the words of the Ascended Masters. Under the rulings of the Court they were not entitled to do so.

Mrs. Ballard stated this discourse was understood by her to mean that in the "inner work", as it is called, an Ascended Master may draw a student into close association with himself, take the student into his own aura and from then on the student becomes a part of himself: The Master attunes the student to his own consciousness and may thereafter reach him more readily. [R. p. 1145.] Consequently we see that the statement last referred to

neither directly nor by a proper interpretation indicates immortality on the part of the Messengers.

The testimony of Mrs. Ballard, on cross-examination, to the effect that the Messengers never represented they were Ascended Masters [R. p. 1144] went uncontradicted and was never questioned by the Government.

The fact that the Messengers made no claim to immortality is also exemplified by the fact that they made no pretense in their public conduct that they were not subject to the same ailments and difficulties affecting and afflicting others. Wilbur Smith, a Government witness, testified that Mrs. Ballard took cough drops from the speaking platform. Communications between the Ballards contain a matter of fact mention of ailments which they had suffered. [R. pp. 604, 848.] A student, Dr. Gottam, testifying for the Government, testified Mrs. Ballard was a patient of his. [R. p. 466.] No secret was made of the fact that Mr. Ballard did not continue physically in this life, and it is significant to note that his death was not deemed inconsistent with any of the teachings.

In respect to the claim of the Government that the defendants represented that through their supernatural power and immortal state old age could be overcome—again no such representations were made. It was believed and taught that old age can and will be partially or wholly overcome by all persons who abide by the teachings. According to Saint Germain, discord in thought and feeling brings about the destruction of the beautiful bodies that nature provides for our experience in the physical part of life. Discordant thoughts and feelings allowed to be expressed by the personal self over the years, as one goes

through life, incapacitates the body and causes it to fall into ruin. Discord is another name of disintegration—a synonym for death. When so incapacitated it can no longer make a self conscious effort to express perfection. Then nature takes a hand to dissolve this limitation in order that the individual may have a new chance to make an effort that is of benefit. ("The Magic Presence"—pp. 20-21.) The Government sought during the trial to twist these teachings in this connection into the belief that one may physically return to the appearance of a young person, but this is not what was believed nor what was taught. The statement relied upon by the Government is the following from a discourse by Saint Germain:

> "I say to you, beloved ones who are in the neighborhood of 60 years old, I tell you, any one of you in six weeks can be as *strong, firm* and *active* as you were in your fullest youth." ("The Voice"—December, 1937, p. 16.)

It will be noted that the statement does not say that youth will return; merely that one can regain or retain strength and activity once had. That this is the proper interpretation of the first statement is made clear by reading another discourse by an Ascended Master:

> "There is one in your audience here today who is 70 years old and yet has the alertness and mentality and action of a child." ("The Voice"—October, 1939, p. 14.)

It is further stated in the same discourse that there will be thousands who will hold this youthful activity to a much greater age—170 years, if necessary. We do not see why this cannot be accepted by these people as readily as the Christian belief that persons have in the past lived to be

the following age: Adam—930 (Genesis 5:5); Moses—120 (Deut. 34:7); Methuselah—969 (Genesis 5:27). Christ gave this prophecy:

> "Verily I say unto you. There be some standing here, *which shall not taste of death, till they see the Son of man coming in his kingdom.*" (Matthew 16:28.)

The Government alleges that the Ballards offered to transmit to others, for money, the supernatural state alleged to be enjoyed by the Ballards, as well as the alleged attributes thereof of agelessness, immunity from disease, poverty and misery, but it is submitted that the record is wholly destitute of any substantiation therefor. We challenge the Government to point out to this Honorable Court a single instance of any such representation by the Ballards, or one iota of evidence to support this allegation.

(2) Divine Appointment and Selection.
(Subdivisions 2, 3 and 4.)

Subdivision 2 alleges that the defendants falsely represented that Guy W. Ballard had been selected by the Ascended Master Saint Germain as a divine messenger and that the words of Saint Germain would be transmitted to mankind through the medium of Guy W. Ballard.

Subdivision 3 alleges that the defendants represented that Guy W. Ballard, during his lifetime, and Edna W. Ballard and Donald Ballard, by reason of their alleged high spiritual attainments, had been selected as divine messengers through whom the words of the Ascended Masters would be communicated to mankind under the teachings commonly known as the "I AM" Activity.

Subdivision 4 alleges that the defendants represented that Guy W. Ballard, Edna W. Ballard and Donald Ballard had, by supernatural visitation, been accorded a supernatural state of immortality and had been appointed messengers of divine entities and the Ascended Masters, and it was only through one of them that the teachings of the Ascended Masters and divine entities would be given to mankind.

Guy W. Ballard, deceased, claimed direct revelation from the Ascended Masters in bringing forth and launching the teachings of the "I AM" Activity. This is evident from the initial publications "Unveiled Mysteries", Exhibit 3, and "The Magic Presence," Exhibit 4, as well as from other exhibits, particularly "The Voice" magazine, which contains the teachings of the "I AM" Activity.

It is not without precedent for one to claim revelation. The Bible from start to finish conclusively proves and establishes that very thing. See: Amos 3:7; Jeremiah 1:5; Genesis 5:22; Genesis 6.

The above are but a few of the references in the Bible illustrating that through the centuries individuals were divinely appointed as revelators, these men being those who in particular eras acted as media between God and man in order to make known to man such truths, teachings and understandings as God desired made known. Christ Himself was a revelator. (John 12:49-50.)

When we recall the foregoing, is it not reasonable for defendant to believe in latter day revelations?

Direct revelation is not the basis of all Christian faiths. Some churches, for example the Roman Catholic, claim direct lineal authority from Christ. Some, for example

Lutheran, claim authority on the direction given by Jesus to preach the gospel as expressed in Mark 16:15-18. But direct revelation is the basis of authority for other religions, for example, Church of Jesus Christ of Latter Day Saints, also known as Mormons.

Not the least difficult of proof as to authenticity are those religions predicated on revelation. In fact, if any religion were called upon to prove the authenticity of its teachings to an incredulous jury, by what possible yardstick could this proof be made? Realizing this difficulty, why should the Government in this case in effect be permitted to cast upon the defendants the burden of proving their claims that the deceased Guy W. Ballard received the revelations from the Ascended Masters?

In respect to the reason which Saint German had for the selection of the messengers, the Government cannot and did not sustain the charge contained in Subdivision 3 that it came about as a result of their alleged high spiritual attainments in the sense that that term is ordinarily used. It must be remembered that a fundamental of this belief is that of re-embodiment and a part of that concept is the belief that one may improve and reach a higher spiritual state in the course of previous embodiments. The Ballards taught that by reason of previous associations with Saint Germain, in other embodiments, and attainments in those embodiments, Mr. Ballard was selected in this lifetime to be taught and to teach others. On his first contact with Saint Germain at Mount Shasta Mr. Ballard wondered who and what He was, and how He knew Mr. Ballard. Saint Germain answered his thought and said to him:

"* * * I have known you for aeons. In raising your thought—by your own conscious effort—it made

my coming to you possible at this time. While I have always been in touch with you, when we were both in our finer bodies--your conscious effort of reaching out to some one of the Ascended Masters—opened the way for me to come to you in a much more tangible way—that is—tangible to your physical senses." ("Unveiled Mysteries," p. 15.)

It was taught in radio broadcasts that Mr. Ballard was chosen by Saint Germain because of previous association and preparation to have and record these experiences. ("The Voice," June, 1937—p. 10; Exhibit 26.) When Mr. Ballard was having the experiences related in "Unveiled Mysteries" Saint Germain took him, instructed him and sent him back to the world to carry the information to mankind. ("The Voice," September, 1938—p. 11; Exhibit 41.)

Again the Government misunderstood the teachings of the Activity when it charged the defendants with representing that they were selected for their high spiritual attainments during this lifetime.

But even assuming for the sake of argument that the Ballards claimed their appointment or selection to have been by virtue of their high spiritual attainments and righteous conduct in this life, the evidence is utterly devoid of any proof of lack of either spiritual attainment or righteous conduct. Certainly the Government threw open wide the door, by this charge, to introduce all manner of evidence, had any existed, affecting any stage or year of the earthly existence of these defendants. Nor was it because witnesses who knew the Ballards were not available to the Government. It had on the witness stand on its behalf persons who were intimately acquainted with

the Ballards for many years. The Government's failure to do this is the greatest proof possible of the fact that no smear against the characters or attainments of the Ballards existed.

The Government's charge that Donald claimed appointment as a messenger because of his attainments, spiritual or otherwise, in this life, are ridiculous when we consider the fact that Donald was but a youth during the time covered by the charges. Hence any references to the reason for Donald's appointment as a messenger obviously would refer to his accomplishments or attainments in some former embodiment. As a matter of fact, in "Unveiled Mysteries" Donald is referred to as having in some former embodiments accomplished much good for mankind.

The Government further charges in this phase of the indictment that the defendants represented that the Ballards were the only channel through which the teachings of the "I AM" Activity would be given. This, in effect, is what is stated by the Ascended Master, Jesus. ("The Voice," February, 1936, p. 7, Exhibit 10.) Like other matters, the verity of this was not for the jury. We point out, however, that the Government did not even attempt to show that the teachings of the "I AM" Activity were or have been received through others.

(3) Teachings Conducive to Attainment of Eventual Salvation.

(Subdivisions 5 and 6.)

Subdivision 5 alleges that the defendants represented that the teachings, precepts, doctrines and principles published and promulgated by the defendants under the "I AM" Movement were the only channels through which

the teachings of Saint Germain and other Ascended Masters would be given to the world, and that said teachings were absolutely essential to the salvation of mankind.

Subdivision 6 alleges that the defendants represented they had attained a supernatural state of self-immortality whereby they were entirely free from ailments common to mankind and were enabled to conquer disease, death, old age, poverty and misery, which power or condition they would transmit to others for money, all for the false and fraudulent purpose of defrauding, and all of which representations the defendants knew to be false.

The Government in this, as in practically every other charging allegation in the indictment, goes beyond the representations as made by the "I AM" Activity and while making a half truthful statement so misconstrues and extends the representation as to make it clearly without substantiation in the evidence.

It will be noted in this charge of the indictment that it is alleged that the defendants represented that *only* through the teachings of the "I AM" could mankind attain his salvation. That is, the Government charges that it was represented that the teachings of the Ascended Masters could come only through the "I AM" Activity and that said teachings were essential to salvation. It is not denied by the defendants that it is, was and always will be their representation that the teachings of the "I AM" Activity furnish a means to eventual salvation. However, there is no evidence whatsoever and the Government cannot point to any evidence wherein the defendants represented that only through the "I AM" activities could mankind's salvation be attained.

Let the Government point out what Christian religion there is which does not preach that adherence to its teachings is a means of final salvation. As a matter of fact some teach in most positive terms that adherence to their belief is essential not only to salvation but to avoid eternal damnation. Thus the Roman Catholic, the Lutheran and the Anglican churches profess the Athanasian Creed to be authoritative.

In this creed it is stated:

"THE ATHANASIAN CREED.

"Whosoever will be saved; before all things it is necessary that he hold the Catholic faith; which faith except every one do keep whole and undefiled; without doubt he shall perish everlastingly. * * *"

The Creed is then set forth and concludes with the following:

"This is the Catholic faith; which except a man believe faithfully (truly and firmly), he cannot be saved."

It is interesting to note that Christianity maintains that only through its teachings can man be saved. In the Bible it is stated:

"He that believeth and is baptized shall be saved; but he that believeth not shall be damned." (Mark 16:16.)

Yet fully two-thirds of the religious people of the entire world profess other than the Christian faith.

We might point out that irrespective of all the foregoing, that the Government has failed miserably in any event to establish that the alleged representations set forth

in this clause of the indictment are false. We have mentioned this same failure in connection with other charges of the Government but as to this particular charge the failure can almost be said to be demonstrated by proof to the contrary because, as aforesaid, virtually every instruction and admonition of the "I AM" Activity as to salvation finds its counterpart in those religions that the prosecutors for the Government would dare not attack.

(4) Books, Magazines, Literature and Other Articles and Paraphernalia Conducive to Eventual Salvation.

(Subdivisions 10, 11 and 14.)

Subdivision 10 alleges that the defendants published and sold, for approximately six years preceding the filing of the indictment, books in which it was stated that the contents thereof were the result of divine visitations and dictations by Saint Germain and other supernatural entities appearing in supernatural visitations to one of the Ballards and that the defendants represented that said books contained the divine instructions for the salvation of mankind, said books being, among others, "Unveiled Mysteries" and "The Magic Presence"; that the defendants represented that the Ballards actually encountered the experiences pertaining to each of them, as related in said books.

Subdivision 11 alleges that the defendants, over a period of seven years preceding the filing of the indictment, published, sold and circulated magazines, booklets, circulars, edicts, decrees and musical compositions under the false representations that they were divinely inspired and dictated by the Ascended Masters and were a part of the

medium through which persons could obtain divine salvation.

Subdivision 14 alleges that the defendants falsely represented that the purchase of certain charts, photographs, records and articles sold by the defendants would bestow upon the purchasers great blessings and rewards in their aim to achieve salvation.

The defendants most certainly have and do represent that the teachings and precepts of the "I AM" as set forth in the books, discourses and magazines are the result of revelations received from the experiences had with the Ascended Masters.

The Government would attempt to dispute the divine relevation of these discourses by asserting a few minor errors or discrepancies. For instance, much is sought to be made of the fact that the stenographic transcriptions of the discourses received by the Ballards from the Ascended Masters were corrected for punctuation and even sometimes for grammatical errors. Certainly it would be unusual to suppose that such errors would not occur to say nothing of the possibility that the channel of these discourses, Mr. Ballard, might most readily and naturally from time to time improperly express the words as received from the Ascended Masters.

As a matter of fact, on the fly leaf of I AM Discourses (Exhibit .....) under "author's appreciation," Mr. Ballard credits Mrs. Ballard with assistance in editing and Mrs. Monday with assistance in proofing the manuscripts. Hence as this book, as well as the others was freely circulated among all members, Mr. Ballard fully disclosed that there were corrections and editing necessary in connection therewith.

Again the Government would say that the fact that upon one occasion the Ballards, speaking personally and not in their respective capacities as appointed messengers, expressed the thought or belief to Miss Majerus, one of their students, that she would perhaps be appointed a messenger, by Saint Germain, and that she was thereafter appointed, is evidence that the discourses were not divine revelations. If this be proof, then surely the task of the Government is an easy one. Each and every instance that the Government might cite is equally shallow upon examination.

It is obvious that the Government has failed utterly to establish that these revelations or experiences were untrue. In fact the truth or falsity was removed by the Court from the consideration of the jury.

The Government again charges that the defendants represented that the instructions contained in the "I AM" literature are designed for the salvation of mankind. Defendants do not deny this. However, we have answered this allegation under Subdivision 3, *supra*.

The defendants have represented and continue to represent that the experiences set forth in the books of the "I AM" were actual experiences, that is, to the extent and in the sense expressed in the books themselves. Neither the "Unveiled Mysteries" nor "The Magic Presence" professes said experiences to have been in the actual every day physical body but, to the contrary, in some form of ethereal body.

As stated heretofore, prior to the organization of the Activity, Mr. Ballard, under the pen name of Godfré Ray King, wrote "Unveiled Mysteries" wherein he recorded certain experiences which he had with the Ascended Mas-

ter Saint Germain. Thereafter he published a second book entitled "The Magic Presence." It was the contention of the Government, as noted by the indictment, that the said books did not contain actual experiences had by Mr. Ballard with Saint Germain or with the other Ascended Masters. In an endeavor to prove such was the fact counsel for the Government, during the trial of the case, endeavored to convince the jury that Mr. Ballard could not have had the experiences enumerated because he could not have been present at the places named at the times designated.

In so contending the Government wholly misconstrued the language of the books and wholly fails to comprehend what is meant by the defendants when they state that an experience is REAL and that the Persons or Beings were actually present.

In the Foreword of "Unveiled Mysteries" it is stated, as follows: "This book is written in the embrace of the majestic, towering presence of Mount Shasta, * * *." That Mr. Ballard was at Mount Shasta and wrote "Unveiled Mysteries" while there is proved by letters from Mr. Ballard to Mrs. Ballard, introduced by the Government. (Exhibit 203.) The following is also found in the Foreword of that book:

> "To those who read this work, I wish to say, that these experiences are as Real and True as mankind's existence on this earth today, and that they all occurred during August, September and October of 1930 upon Mount Shasta, California, U. S. A."

The first experience with Sainta Germain recorded in the book is while Mr. Ballard is on the mountain side of Mount Shasta. Certain experiences are given to him

by Saint Germain at this first meeting. However, it is not pretended that those experiences occurred in the physical body of Mr. Ballard. It is stated, on page 24:

> "'Notice!' he reminded me, 'you are experiencing these activities in your *finer body*—but they are none the less—Real—because of that—for your physical body is only a garment which you—the Self-Conscious—thinking—and experiencing individual, wear.
>
> "'It is the same as though you wore a heavy overcoat in the cold winter atmosphere and only a light suit of clothes on a very warm summer day. Experiences in your light suit of clothes—would surely be no less—Real—than those you lived through in your heavy overcoat. I call this to your attention, that you may understand—the fuller—and less limited—activities of Life.'"

Clearly by the word "real" is not meant physical, for during the experience his body reposed on the ground (p. 19) and on page 27 it will be noted that he states concerning the return, after the experiences: *"As we came near my body,* he instructed again."

The next experience enumerated concerns a civilization formerly existing in the Sahara Desert and it should be noted that in this case the manner of the experience is entirely different from the manner of the experience in Chapter 1 of the book. Saint Germain stressed, at the outset (p. 33):

> *"Instead of going forth from the body as in your recent experience, today we will use the Projected Consciousness.* * * *
>
> "I wish you to fix firmly in mind, and recall frequently for contemplation—the fact—that the Laws I explain, and teach you to use, are to bring you

into a condition—of Conscious Mastery—over all forces—and things on earth. This means that—no matter what is being experienced—you are always at every instant in complete conscious control of your own mind and body, and able to use your own free will—at all times.

"In this state of Projected Consciousness—you are completely conscious and have full mastery over all —your faculties every instant. * * *

* * * * * * * *

"A student may be given the experience of Projection—if an Ascended Master chooses to expand his consciousness temporarily—so that he experiences things happening in *two* or more places at the same time. In such a condition—the student's faculties are completely under the control and direction of his own free will—at every moment. He is fully conscious and active—*wherever his body may be*—and also at the place to which the Ascended Master chooses to direct his attention for the instruction."

In this state (p. 35):

"* * * one uses his faculties of sight and hearing exactly as he does in daily life, except that they are expanded into the next octave or zone above the human."

There follows experiences involving a civilization which existed in what is now the Sahara Desert during a preceding Golden Age and at the Royal Tetons. They are again experienced in the "finer body" (p. 75).

We turn next to "The Magic Presence" the experiences of which the Government claims could not have occurred as recited because of inconsistencies in time and place. An examination of the book in relation to the first book

clearly demonstrates that while the experiences are denominated Real, True and Eternal, it does not say and it is not intended to convey the idea that he was actually at the places at the time mentioned, in the physical body as the term is ordinarily used any more than in the first book. In the foreword of this second book it is stated:

> "The book contains the *second group* of experiences which I was privileged to have through the Love and assistance of the Beloved Ascended Master, Saint Germain."

On the first page he refers to the ending of "Unveiled Mysteries" and then states:

> "In this book I shall describe *another group* of important and wonderful experiences which I was privileged to have *during those months of association with our Beloved Ascended Master, Saint Germain.*"

The foreword that the experiences are "Real, True and Eternal" is not contrary to what has been said, because under the concepts of the defendants an experience may be real and true and yet need not be experienced in the physical body. We call the Court's attention to the fact that in "The Magic Presence" it is stated:

> "In 'The Magic Presence' my experiences were the results of applying the knowledge he had previously revealed." (Forward, p. 11.)

That obviously refers to the use of the Projected Consciousness described above and set forth more fully at pages 33 and 34 of "Unveiled Mysteries," and in such Projected Consciousness it is not necessary that the physical body be present. In fact, as noted, one may experience things happening "in two or more places at the same time."

Nor did the defendants ever represent that Mr. Ballard took the trip or was at the places mentioned in the books in his ordinary physical body. In a radio address by Mrs. Ballard ("The Voice"—June, 1937, issue, at p. 9, Ex. 26) she explains that in their quest for truth:

> "* * * The answer to our quest came in 1930, right here in your own glorious America, on the side of Mount Shasta, when Saint German, Who is One of the Great Ascended Masters, came forth to Mr. Ballard and made it possible for him to have the transcendent illuminating experiences which Mr. Ballard has recorded in his book, UNVEILED MYSTERIES, written under the pen name of Godfré Ray King. A few months later, in the beautiful Wyoming Rockies and the Grand Teton of Teton National Park, Mr. Ballard was shown and taught the marvels which he has recorded in his book, THE MAGIC PRESENCE. * * *
>
> * * * * * * * *
>
> "At the close of these experiences Mr. Ballard returned to our home in Chicago where further explanation of this Mighty Law of Life—the 'MIGHTY I AM Presence'—was given to us by Saint Germain in person. * * *"

The question of whether or not the books were the result of divine inspiration was expressly withdrawn from the jury by the Judge. The only question left to the jury was whether or not the defendants, in good faith, believed that the visitations set forth in those books actually occurred. The Government's attempt to prove that the defendants were not in good faith, by showing that Mr. Ballard could not have been at the places at the time stated, greatly prejudiced the defendants' case before the

jury. When properly viewed, the facts upon which the Government placed so much reliance during the trial, are no evidence whatsoever to support the charge contained in this subdivision of the indictment.

Furthermore, it is seen from an examination of these books that the narrative portions thereof are but incidental to the release of the teachings and precepts of the Ascended Masters, which teachings and precepts are so profusely set forth in the course of the narratives. These books form but one of the means through which the teachings of the "I AM" Activity are given. Nowhere can the Government point out that the defendants represented directly or indirectly that the actual possession of these books was necessary for the attainment of salvation, or for the acquisition of an understanding of the teachings of the "I AM" Activity. Actually it was believed a convenience for the students to have the books available as an assistance; but this is a far cry from the allegation of the indictment that the purchase of the books by the students was necessary for salvation.

We are familiar with the articles of use and adornment that various religions suggest as being adapted to the assistance of their brethren in the attainment of salvation. Prayer books, rosaries, blessed candles, holy water, oils, pictures, crucifixes, medals and innumerable paraphernalia are recognized by all of us as being proper media of assistance to the faithful in the practice of their respective religious concepts.

As to records, songs, flames in action, and the like, they were never represented as being at all necessary to salvation. They were believed to be effective for contemplation and meditation, just as crucifixes or other religious articles.

(Exhibit 45—inside cover of "The Voice," January, 1939.) Records were said to be charged with a healing quality but "healing" as used by the Activity and by the students was not restricted to nor did it necessarily refer to physical ailments. It had reference to the mental and spiritual side as well. [R. p. 950.] Such songs and records assisted students in the practice of their religion, that is, in the call upon their "I AM Presence" in an endeavor to attain harmony and perfection.

Much is made of the fact that the "I AM" teaches that the use of decrees, preferably given in unison, would be helpful in the attainment of assistance from the Ascended Masters. As usual, the Government infers that the giving of the decrees in unison was for the purpose of selling more decrees. This practice of the giving of decrees in unison is not peculiar to the "I AM" Activity. For one, the Catholic church practices the recital of litanies and prayers which are given in unison. Furthermore, the giving of decrees in unison is entirely in conformance with the teachings of the "I AM." There exists the belief that the procurement of assistance is through calls made by individual members; that an individual can cause a flow of energy to go forth, helpful to the attainment of the particular goal; and that the greater number of people participating and making the calls, the greater the effect.

As to their literature, it is similar in effect and purpose to the "Christian Science Monitor," "Christian Science Sentinel," Catholic "Tidings," Catholic "Messenger," the Mormon "Improvement Era," and other church publications. Hymn books and manuals are used in practically every religion.

Christ appointed His apostles to spread the word of God to the four corners of the earth and certainly had the day and age been the present one, they would have been the first to have used the modern means of communication, such as the radio, magazines and books in the promulgation of their teachings. Naturally defendants believed that those who obtained the books and magazines, those who listened to the radio talks, and then followed the teachings, would be assisted.

The Government further alleges that it was falsely represented that all the musical writings or compositions of the "I AM" were divinely inspired. The Government totally failed in its attempt of proof. The Government called as a witness Virginia La Ferrera, apparently in an effort to show that it was she who wrote the songs attributed to Mr. Ballard. However, in reading her testimony it will be noted that Mr. Ballard played the theme and presented the lyrics and that she acted, by her own testimony, as arranger, although she attempts to create the impression that it was she who wrote the songs. [R. p. 500.] Virginia La Ferrera is one of the apostates who left the "I AM" Activity and she was followed in the capacity of organist by Frederick Loudwehr, who was called as a witness by the defense. He testified that Mr. Ballard played the piano in his presence many times and asked Mr. Loudwehr to take down the compositions "coming through"; that Mr. Ballard would play the theme and that the witness would take it down and arrange it. He explains the meaning of the music "coming through" as follows:

> "I meant that Mr. Ballard would just play the music —would just pour through him. It wasn't anything familiar." [R. p. 1119.]

In their advertisements the defendants uniformly stated that the songs were those of Godfré Ray King, Virginia La Ferrera or Catherine Rogers, as the case might be.

(5) Healing.

(Subdivisions 7 and 8.)

Subdivision 7 alleges that the defendants represented that the Ballards had, by reason of supernatural attainments, the power to heal persons of ailments and diseases and the ability and power to cure persons of those diseases normally classified as curable and incurable and that they had, in fact, cured, either by the activity of one, either or all, hundreds of persons afflicted with diseases and ailments, and that said representations were made for the purpose of acquiring domination and belief among the followers of said movement.

Subdivision 8 alleges that the defendants represented that the Ballards had, by reason of divine origin, acquired a great healing power and that the followers of the "I AM" Movement might also acquire such healing power and be able to achieve perfect bodies and heal themselves of human ailments if said followers would give implicit obedience to the precepts, principles, teachings and doctrines of the "I AM" movement.

It is to be noted that the Government's charge is that Ballards claimed that they healed. The truth of the matter is that the only claim made by the Ballards in this respect is that healing is accomplished only through calls to the "Mighty I AM Presence"; that the most that they or any student could do was to place such calls. (See "The Voice," April, 1940—page 36; Exhibit 60.)

In the April, 1936, edition of "The Voice" (Exhibit 12) it is said that the words of the Ascended Masters are a substance charged with power to produce Perfection in the individual. It is next stated (page 8):

> "*You must use them yourself* in order for that substance to locate in your mind and body. *No one else can ever do this for you* and that is the reason why *only by his own conscious effort* can the individual ever gain his freedom and victory over the activity of the outer world."

This is made clear in the December, 1936, issue of "The Voice," page 7 (Exhibit 20):

> "Do you not see, loved ones, your Presence is the greatest healing Presence in the world? Oh do not become discouraged if you make the call, for instance, for health and you do not see results. Say to those appearances: 'You have no power!' Then continue in your application to call your Presence into action * * * It will supply to you all that is required, as has been proven in thousands of instances among the students when *they make that call with the power of their Presence* to give them health and freedom not otherwise possible."

Even the Ascended Master does not profess to heal the student. It is stated (page 7):

> "We can only endeavor to encourage and sustain you until your call becomes intense enough * * *" (Exhibit No. 20.)

In a discourse by Saint Germain, to be found in the November, 1936, edition of "The Voice," at page 3 (Exhibit 19), it is said that an earnest determined application of the simple laws which are given is all that is required to have freedom, dominion and achievement in one's life.

It is said in "The Voice," April, 1936, at page 3 (Exhibit 12) that persons who have accomplished healing through various activities for a time have eventually failed because it was done for a livelihood instead of for the purpose of illuminating the mind of the individual. As in many Christian denominations there is a recognition of the fact that one person may pray for and assist another, so in this Activity one may make calls for the aid and assistance of another, thereby helping the other as well as himself. ("The Voice", February, 1940, p. 7. Exhibit 58.)

Proof that the Activity taught that healing is accomplished chiefly through the conscious effort of the individual, but can be and often is assisted through calls by other students and by the leaders is shown not only by the discourses but by the testimony of the Government's witnesses, testimony of the defendants' witnesses and the statements of the defendants themselves. Where students have written to the Ballards asking that they also make a call on the student's behalf, Mrs. Ballard has publicly announced that in some instances the cure was obtained before the leaders even received the letters. [R. p. 406.] It was taught that upon applying the law the students had as much healing power as the messengers. ("The Voice," September, 1937, p. 15: Exhibit 29.)

There was no misunderstanding among the students of this Activity as to how they were to perfect their bodies. Mr. Rogers, a Government witness, and a member of the Ballard staff for a considerable period of time, stated:

> "I never heard the Ballards, or either of them, say that they had the power to heal. * * * Essentially the whole idea was predicated upon the theory that

one must call upon the Mighty I AM Presence to project on them the healing ray and make them well. I believed this and still do." [R. p. 392.]

Mrs. Bliss, a former teacher in the Activity, Government witness and bitter against the Ballards, stated:

"It was my understanding the person seeking healing had to ask for it and then be receptive in his mental attitude. I don't think it was ever stated that the person had to erase all doubt. *They said you could apply this principle yourself.* I thought that healing happened instantly on the inner planes but that it might take a while to show through. They claimed they had a very much stronger dynamic call —it might take me a month to call forth the power that they could call forth instantly." [R. p. 457.]

Defendants' witnesses (students of the Activity) who came from all parts of the country, testified that they did not hear Mrs. Ballard, or anyone, say that the Ballards could heal; that their understanding regarding healing was as stated above. [Cahill, R. p. 954; Sewards, R. p. 958; Boerrigter, R. pp. 972-973; Kildah, R. p. 980; Magnuson, R. p. 987; Leona Carter, R. p. 992; Roy, R. p. 1001; Lovette, R. p. 1005; Gardiner, R. p. 1007; Hudson, R. p. 1011; Palmer, R. p. 1040; Elsa Chamberlain, R. p. 948; Zimmerman, R. p. 936.] It is not taught that individuals who have not become aware of the "I AM Presence" should cease all remedial agents, but that until sufficient mastery is obtained the remedial agents should be used sparingly. (I AM Discourse, Exhibit 5, p. 236. Assistance by the medical profession is recognized. ("The Voice," October, 1939, p. 35; Exhibit 54.)

There is no doubt that the defendants taught, and believed, that through their calls and the assistance given by them to students, they had been of tremendous assistance to the students in effecting cures. The Ascended Masters so stated in discourses. The Government will undoubtedly cite certain of these statements, seek to attach to them undue significance and endeavor to convince this court that those statements are false and contain a representation that the Ballards had a supernatural power to heal. We quote from one of those statements stressed by the Government during the trial:

> "Remember, beloved students, many of you have not heard this, but through the call to this Beloved Messenger alone (Mr. G. W. Ballard) over twenty thousand instantaneous healings have been achieved *by his calls* in five years. There is no such other record upon the earth as this, and yet there are people who want to destroy him." ("The Voice," Feb. 1940, p. 17, Exhibit 58.)

It will be noted that in the foregoing statement, and in all statements of similar nature, the assistance was professed to have been rendered *by the calls* of the messengers.

Now, whether or not such assistance was actually rendered through calls by the messengers is not involved in this case. The only pertinency of the whole matter is whether or not the Ballards believed statements of the Ascended Masters that their calls had been of assistance to the students. In this connection we call the court's attention to the testimony of Pat Crouse, a Government witness, and exceedingly antagonistic to the Ballards. He states:

> "I actually talked to many people who claimed to be healed, and I believed those people who told me

that they had been healed and that they had been healed as a result of the Movement. In letters I heard a number of people say that they had been cured of what was generally regarded by medical people as incurable diseases. I did not believe the statements in the letters without reservation in some cases." [R. p. 579.]

The foregoing testimony comes not from a student of the Activity, but a person who states he had close knowledge of the Ballards and lived with them day in and day out for several years.

Apparently the Ballards were constantly advised through Group Leaders, of healings which occurred among the students. In a letter from the Ballards to Jane Ferguson, a Government witness, they stated:

"The letter of your student in N. C. Through whom the marvelous healing has manifested, is wonderful indeed. The Mighty 'I AM' Presence bless him ever with greater and greater healing power." [Exhibit 207, R. p. 856.]

The witness testified that that was in answer to a letter she had written to the Ballards regarding the healing manifested in one Mrs. Billheimer. [R. p. 864.]

Defendant witnesses testified that they had been benefited and healed through the Activity. Boerrigter—improved eyesight and better health [R. p. 973]; Johns—acute nervous headaches [R. p. 995]; Cahill—benefited physically [R. p. 954]; Zimmerman—eyesight and general physical condition [R. p. 938]; Buck—improvement of weakened condition [R. p. 989]; Hawley [R. p. 997]; Roy [R. p. 1002]; Lovette—paralysis, diabetes, heart condition [R. p. 1003]; Hudson [R. p. 1012]. Of

course, the Ascended Masters were usually the ones who commented on the healings, but with such background and such information at hand, were not the Ballards justified in making statements that *through* the Activity and *through* calls to the "Mighty I AM Presence" thousands of people had been benefited, some of them cured, of commonly believed incurable diseases? Why were they not as justified in believing and stating this to be the fact as those who conduct the Shrine at Lourdes, France, and St. Anne's de Beaupré, at Quebec, Canada?

After all, the idea that healing of disease can be accomplished through faith is the basis upon which an integral part of at least one sect—that of the Church of Christ Scientist, is founded. As defined by Mary Baker Eddy the religion she founded is "divine metaphysics": it is "the scientific system of divine healing"; it is "the law of God, the law of good, interpreting and demonstrating the divine principle and rule of universal harmony." ("Science and Health," pp. 111-123; Rudimental Divine Science, p. 1.)

Again we realize that in the Bible we are taught that healings through others than Christ have occurred. (Mark 16:18.)

Almost every Christian denomination has, in one form or another, a concept that its ministry can be of special assistance to its members in overcoming physical ailments.

We submit this charge is the result of an insufficient and incomplete understanding of concepts of the Activity, and an unwillingness on the part of the Government to concede that it is possible for members of the "I AM" Activity to believe that which is commonly accepted without question, when professed by members and leaders of other Christian faiths.

(6) Precipitation.
(Subdivision 9.)

Subdivision 9 alleges that the defendants falsely represented that the Ballards had a divine and supernatural ability to bring forth from a supernatural state, money, riches and other material needs which power the defendants could transmit to others willing to pay therefor.

This alleged misrepresentation is apparently based upon the fact that the "I AM" belief contains a concept concerning precipitation, both natural and instantaneous. It is strange that the Government should object to this portion of the doctrine of the Activity in view of the fact that almost every Christian belief contains a concept of natural precipitation through faith and prayer and recognizes the accomplishment of instantaneous precipitation in the works of Christ. The common belief in natural precipitation maintained by practically all Christian denominations is practiced by prayers for rain, peace, prosperity, health, etc. Examples of instantaneous precipitation by persons other than Christ are also enumerated in the Bible. The waters of the Red Sea parted at the command of Moses to let the children of Israel through. (Psalm 106:9-11.) Again Moses, by striking a rock with a staff, brought forth water for the Children of Israel. (Exodus 17:5-17.) The walls of Jericho fell as the High Priests blew their trumpets. In I. Corinthians 12, the Apostle Paul teaches that one of the gifts is the precipitation of miracles.

Precipitation as taught by the Activity did not contemplate the accomplishment thereof by the leaders any more than by the students. ("The Voice"—September, 1937, p. 14, Exhibit 29.)

Mrs. Ballard testified that as far as she knew Mr. Ballard never attempted instantaneous precipitation. [R. p. 1148.] She stated that once, at her call, she was able to condense in her hands points of slight substance which she examined under a reading glass and which remained for approximately 20 minutes; that except for that one instance she had never attempted instantaneous precipitation. [R. p. 1148.]

It is noteable that when money was required for the publication of their books they didn't make any pretense of being able to obtain it by instantaneous precipitation, but sought it through natural channels. [R. p. 474—Killen Letters, Exhibit 119.]

The belief is founded primarily upon the tenet that everything in the physical world came into physical form and manifestation by the activity of the law of precipitation; that everything comes out of the invisible octave of life and becomes visible and tangible to our senses, serves for a while and then ultimately dissolves.

> "* * * the Universe is filled with the substance from which all form is produced whether it is your machinery, whether it is your trees, whether it is your bodies or whatever form comes into being. That substance fills the Universe and only requires an Intelligence to bring it into a definite focus, qualify it and give it the picture that it must fulfill, * * * " ("The Voice"—April 1937, p. 9, Exhibit 24.)

It is a further tenet of the belief that upon the attainment of sufficient Perfection upon the part of students and in accordance with the promise of Christ (what I do all men shall do and greater things than these shall ye do

John 14:12), they would be able to accomplish instantaneous precipitation.

Precipitation could not be attained for other than a good and useful purpose and would not be allowed to persons who sought it merely to gratify their own selfish desires, and the students were so taught. ("Unveiled Mysteries," pp. 195 and 196.)

Precipitation, whether natural or instantaneous, is merely a difference in the same activity. In "I AM Discourses," at page 65, it is said (Exhibit 5):

> "* * * When I speak of precipitation in this manner, I do not only mean through the invisible but through any channel, for all is a precipitation; it is only a little difference in activity."

The students were taught that the precipitation which they could accomplish would probably be through natural means. ("The Voice"—March, 1939, p. 11, Exhibit 47.)

It was, however, believed and taught that the students were making progress toward the accomplishment of instantaneous precipitation. ("The Voice"—March, 1939, p. 28, Exhibit 47.) Once Perfection is attained and doubts concerning the ability to accomplish precipitation dispelled, if the feelings of the students are deep enough, there could be precipitated anything proper for them to have. Once they attained such Perfection precipitation of substantial amounts and things could be as readily accomplished as precipitation of lesser things. ("I AM Discourses," p. 64, Exhibit 5; "The Voice"—July, 1936, p. 10, Exhibit 15.)

The Government in its brief extracts brief isolated excerpts from lengthy discourses of the Ascended Masters

as to what has been accomplished by the Masters and what may hoped to be accomplished by students of the I AM upon attainment of sufficient harmony and seeks, contrary to the evidence, to infer that the defendants claim to have accomplished such achievements themselves.

The Ballards made no claims that anything beyond natural precipitation had been accomplished by the students. In fact, a portion of the strife which brought certain students to the Government's side of this case came about as a result of repudiation by the Ballards of unwarranted claims by students of instantaneous precipitation. Discharge or withdrawal of Max Gysi, a Government witness, came about because he insisted upon going about the country claiming that a certain jewel which had been given to Mrs. Ballard by Mrs. Barnard had been precipitated. [Exhibit 103, R. p. 360.] On another occasion the Ballards gave warning to the students that claims of individuals concerning the precipitation of babies were false; that the Ascended Masters do not teach such deception; that everything the Ascended Masters teach is the result of perfectly natural self-evident God-law which everyone can apply when it is explained; and that everything they teach and do is sound, sane, good and true. ("The Voice"—August, 1938, p. 35, Exhibit 40.)

We have, then, a total lack of evidence that the defendants ever made any pretense of being able to accomplish precipitation as claimed by the Government, and there is an utter failure on the part of the Government to show that the defendants ever offered to transmit any information concerning precipitation to others for money. The whole matter reduces itself to a situation where a religious sect taught, under the title "precipitation," a sub-

ject taught and believed in by practically every other Christian sect. After all, didn't Christ teach:

> "And I say unto you, ask and it shall be given you; seek and ye shall find; knock and it shall be opened unto you." (Luke 11:9.)

(7) Cataclysms.

(Subdivisions 12 and 16.)

Subdivision 16 alleges that the defendants represented that a cataclysm or the end of the world was approaching within the life span of persons now living and that it was no longer necessary to provide for the future or to save money, and that the followers of the "I AM" Movement should withdraw their funds from banks, life insurance companies and other financial institutions, and turn said money over to the defendants in the form of love gifts.

Subdivision 12 alleges that the defendants represented orally and by their writings that it was solely by reason of their teachings and their embodiment in the "I AM" Movement, and by their divine power and influence that the United States of America was saved from destruction and that they had been accorded the ability to maintain the sovereignty and general welfare of the United States of America by divine inspiration.

There is no doubt but that according to the beliefs of the members of this Activity cataclysms have occurred on this earth. There is no doubt that they believe that cataclysms will again occur—particularly if the people do not live in harmony and make a conscious effort to attain perfection. However, although the Government is willing to permit practically all other Christian faiths to teach a similar doctrine, when it is taught by the "I AM" then,

according to the Government, it is only so taught for the purpose of frightening people into giving them money. It is part of an effort on the part of the Government to twist each belief and tenet of this religion in one manner or another until they can infer an ulterior motive on the part of the leaders. The existence of past cataclysms and the expectation of future cataclysms is mentioned in the Holy Bible—not once, but on numerous occasions. Of course the most familiar is Noah and the flood. Some of the other instances are as follows: In the Book of Malachi, 4:1-5, it is stated the "earth shall burn as an oven and all the proud and all the wicked shall burn as stubble, but unto you that fear My Name shall the Son of Righteousness arise with healing in his wings and ye shall go forth and grow up as calves of the stall."

In the New Testament, Jesus, in speaking of his second coming, stated:

> "There shall not be left here one stone upon another that shall not be thrown down." (Matthew 24:)

See, also, Isaiah 2 and 24.

The teachings of the "I AM" in respect to the threatened darkness and calamities which will befall humanity are greatly outweighed by the descriptions of the horror and desolation which the Bible teaches will occur in the event mankind does not obey the teachings therein. Will it be said that the average minister today, because he teaches that the above and other cataclysmic occurrences will result from lack of proper living, is doing so falsely and for the purpose of obtaining money? If not, then why is it that the Government should pretend to have the right to make such an inference from precisely similar teachings of the "I AM" Activity?

Let us now examine the belief of this Activity in respect to cataclysms. It is the contention of the Government that a date was set for a cataclysm by the Ballards, or one was said to be expected within the immediate future. The teachings of this Activity are found in the books and in the discourses. We do not find a single instance therein where a date for a cataclysm has been set and anyone has been told to dispose of his property because of such an approaching event. The students called as witnesses by the defendants testified uniformly that no date for a cataclysm was set. [Zimmerman, R. p. 936; Magnuson, R. p. 984; Carter, R. p. 992; Palmer, R. p. 1040; Allen R. p. 1043.] Others heard no statements at all concerning cataclysms. [Chamberlain, R. p. 949; Cahill, R. p. 954; and Boerrigter, R. p. 972.]

Against the record of the teachings of the Activity and against the testimony of the students we have Mrs. Hill testifying that Miss Majerus told her that Mrs. Ballard had told Miss Majerus that a cataclysm was to be expected very soon and that Miss Majerus had suggested that Mrs. Hill keep her money on her person. [R. p. 507.] Miss Majerus denied the statement to Mrs. Hill and, of course, even if Miss Majerus did make it to Mrs. Hill there is no proof that Mrs. Ballard told it to her. There are other bits of alleged similar private conversation upon which the Government will endeavor to rely.

One or two of the apostates who implicitly believed in the Ballards and believed in the doctrine which they themselves taught, suddenly lost belief and attempted to interject alleged private conversations such as to the effect that the Ballards said a certain young couple were foolish to buy a house as the date had been set for a cataclysm.

Now if the teaching that a cataclysm would occur was not taught in good faith, but was taught for the purpose of obtaining money and if, as contended by the Government, Saint Germain and the Ascended Masters were not believed in by the Ballards, but were a tool created by them to obtain funds, then is it not astounding that in a discourse by one of the Ascended Masters the students are not told to sell their property and turn it over to the Activity?

The existence of past cataclysms and the coming of future ones was a part of the belief of these defendants from the very inception of their work. Had the situation been as the Government contends, the matter of cataclysms would have been brought into the Activity after its organization was conceived, and after its propagation depended upon the gifts and contributions of its members. But such is not the fact. Cataclysms are discussed, described and explained in numerous instances in the very first publication "Unveiled Mysteries."

Civilizations are developed, according to the concepts of this book, when groups of mankind come under the instruction of an Ascended Master. They are given an opportunity of seeing the "plan of life" and the perfection which they will attempt to bring forth and live in by their conscious efforts. When they do not understand this, or are lethargic in their efforts, the sustaining power of the Ascended Master is withdrawn and the civilization collapses. ("Unveiled Mysteries"—pp. 189-190, Exhibit 3.)

The self generating and self purifying force within nature will not tolerate such imperfection and rises up to throw off all that disagree with "The Law." (Exhibit 3, p. 47.)

It is also believed that a Golden Age will eventually descend upon the world in which Golden Age the United States will play an important part. Government and all else would attain a state of Perfection. It is further believed that such Golden Age probably will be preceded by some cataclysmic activity.

Indicating that the Activity made no such use of its belief in cataclysmic action as is charged by the Government is the fact that no one was produced who made any pretense of having been defrauded. If such persons existed, was the Government, with its unlimited means of investigation, unable to find them? Certainly it was not unwillingness to expend the necessary funds; when we consider that a witness of the type and character of Wilbur Smith was brought from Florida, apparently no expense was spared.

Most certainly the defendants have not represented, as charged by the Government, that through their divine power and influence the United States was saved from destruction nor that they had been able to maintain the sovereignty and general welfare of the United States through divine inspiration. In substance they merely believed that appeals to the "Mighty I AM Presence" by the students and themselves were most instrumental in preventing catastrophes to the United States and in procuring divine guidance for the servants of the government. They believed that in instances their prayers had been answered.

Consistent with their belief that cataclysmic actions could and would effect the world as a whole under certain conditions, it was believed by the Activity that the United States could likewise be destroyed unless it made an effort to reach a perfect civilization and to play the part which

had been expected of it, as a nation, in the Golden Age, believed forthcoming. As a result it was taught that constant effort must be made to protect the country and to protect the Government; that unless the students were constantly on the alert and decreed for the salvation, protection and perfection of the country, it would be destroyed, as many other civilizations have been destroyed as a result of their lethargy in seeking to accomplish what the Ascended Masters desire.

(8) Divine Inspiration as to Saint Germain's Picture.

(Subdivision 13.)

Subdivision 13 alleges that the defendants represented that one Charles Sindelar had painted the picture of Saint Germain as a result of a visitation by Saint Germain before said Sindelar, and that the purchase of copies of said picture was desirable in order to effect and achieve salvation, when in truth and in fact defendants knew said picture was but a copy of a previously existing picture by Theresa de Carranza.

Charles Sindelar was and is a very able painter who painted, among other things, two pictures, one of Jesus and one of Saint Germain. The picture of Jesus was apparently a very splendid one and it was stipulated that it was approved by a number of the Christian denominations. [R. p. 1060.] According to Mr. Sindelar it was painted by him as the result of twenty-one visitations by Jesus before him, in his room. [R. p. 1060.] Prior to that time he had never attempted to draw any religious subjects. The picture was done in 1929, which of course is before the "I AM" Activity commenced. The likeness of

Saint Germain was painted by Charles Sindelar at the instance of Mr. Ballard. He testified that he made a sketch or drawing of Saint Germain at Los Angeles which he took to San Francisco and showed to Mr. Ballard, who stated: "That isn't Saint Germain at all." Thereupon, while in San Francisco, the Ballards and Mr. and Mrs. Sindelar sat down and called on the "Mighty I AM Presence" to give him some idea of what Saint Germain looked like, and he obtained a mental impression. He started work with that and every time he needed more information they would sit down again and obtain a further mental impression which would last with him while he was working. When the picture was finally drawn Mr. Ballard agreed it was a splendid picture of Saint Germain as he knew him. [R. p. 1062.]

Confusion has arisen on the part of the Government over these two pictures. It is true that it was claimed and strenuously asserted by Mr. Sindelar that the picture of Jesus was the result of visitations. This was not claimed by Mr. Sindelar as to the picture of Saint Germain. The Government bases this claim upon a pamphlet in evidence as Government's Exhibit 97, wherein it is stated that Saint Germain "revealed" himself to Mr. Sindelar. All that is conveyed and all that was intended to be conveyed by that expression was that as the result of the decreeing and calling upon the "Presence" Saint Germain's likeness was revealed to Sindelar. This is best shown by comparing certain notices found inside the back cover in numerous "Voice" magazines, published between February, 1936, and November, 1937. In reference to the picture of Jesus it is said:

> "'A hand colored etching by Charles Sindelar to whom Jesus had personally appeared."

Then on the same page of the magazine, in respect to pictures of the Ascended Master Saint Germain, it is said:

> "A hand colored etching by Charles Sindelar, an exact likeness as He has appeared on many occasions in the Retreat."

The same distinction is found in Exhibit 96 when that exhibit is compared with Exhibit 97, mentioned above. In Exhibit 96, in reference to the picture of Christ, it is said:

> "Jesus came to Mr. Sindelar for 21 consecutive days at two o'clock in the morning *in his* visible body until the painting was completed,"

while in Exhibit 97, in reference to the Saint Germain painting it is said:

> "Saint Germain *revealed* himself to Mr. Sindelar previous to and while he was painting Saint Germain's likeness and He has said that it is splendid."

The Government's contention that Mr. Sindelar copied Saint Germain's picture from a picture by Theresa de Carranza is disproved without argument by merely comparing Exhibit AAA, Sindelar's picture, with Exhibit 201, the Carranza picture.

Mr. Sindelar testified that at the instruction of Mr. Ballard he placed the hieroglyphics and scroll behind the picture of Saint Germain. These are usually found on pictures of Saint Germain and other Ascended Masters. It was never contended that those words or that insignia were a part of the likeness revealed to him.

Theresa de Carranza testified that she painted her picture from her imagination and got the characters from the Priest Egyptian having copied them from the Encyclopaedia Larouse and placed them on the picture because she

thought they were pretty. She testified she did not know who the man was and had never seen a picture like the one she painted. [R. pp. 1068-71.] The Government apparently hoped to prove that as the scroll on the Sindelar picture was the same as on the Carranza picture, one had been copied from the other. It soon became apparent, however, that the scroll is a common one—being of Theosophical origin. [R. p. 1070.]

As far as the charge that the purchase of pictures was desirable to achieve salvation, the truth is obvious that they were merely represented as useful for contemplation in the same manner as pictures and statues are used by other religions.

(9) Promise of Appearance of Ascended Masters. (Subdivision 15.)

Subdivision 15 alleges that the defendants represented that there would be an actual visitation in one or more designated places of the United States of the Ascended Masters, or divine entities, which said divine entities would appear in physical form before the assembly of followers of the "I AM" Movement. It is further averred that as a result of that representation students traveled about the country in expectation of seeing the Ascended Masters, and that when they did not appear the students were lulled into a blind belief that their non-appearance resulted from a lack of harmony on their part.

It was the belief of the Activity that the Ascended Masters would, in time, appear before those of the students who so perfected and harmonized themselves as

to justify their appearance. Saint Germain promised those who were ready and willing to accept instruction:

> "* * * One day I will stand before you in the tangible, visible form, and then you shall see whether I am real or not." ("The Voice," September, 1936, p. 20, Exhibit 17.)

On another occasion he stated that the students would see that he was real

> "when I choose to come forth in my tangible body and talk to you as the Messenger is talking to you now." ("The Voice"—November, 1940, p. 5, Exhibit 197.)

The students were warned that the Ascended Masters desired to come forth but that they could not and would not do so until a certain amount of achievement had been attained and the students had harmonized themselves sufficiently. (Exhibit 104—Group Leader Letter, December 17, 1937.)

The Government seeks to infer from these statements from the Ascended Masters and others of similar purport that they were given by the Ballards and not by the Ascended Masters and that they were given for the purpose of inducing the students to "travel far distances at great expense with the hope and expectation that the Masters would make a physical appearance." It is most unusual the manner in which the Government seeks to continually draw an inference of evil from the profession of practically each tenet and belief of this Activity. This is even more peculiar when we realize that in this case, as in most others, the tenet has a counter-part in the religion of all other Christian peoples and that the

promise of the re-appearance of God before the people is promised in the Holy Bible. Not only is the re-appearance of the Lord promised, but likewise the people are told to be patient—that there is no doubt that it will come about. We quote:

> "Be patient therefore, brethren, unto the coming of the Lord. Behold, the husbandman waiteth for the precious fruit of the earth, and hath long patience for it, until he receive the early and latter rain;
>
> "Be ye also patient; stablish your hearts: for the coming of the Lord draweth nigh." (JAMES 5:7-8.)

Nor is the Christian belief of the appearance of Ascended Beings limited to the distant past. The Shrine of Guadelupe in Mexico is founded upon the appearance of The Virgin Mary before a poor Mexican and the stamping of Her picture upon his cloak, which is believed to have occurred in the year 1531.

The Mormon faith is founded upon the appearance of many Heavenly Messengers before Joseph Smith. (Doctrines and Covenants—and Book of Mormon of the Church of Jesus Christ of Latter-day Saints.) The Catholic Church records numerous appearances of Christ and the Virgin Mary to Saints of the church.

While it is true that some of the students and believers of apparently ample means do attend the classes held in various cities, it was not shown that any of them traveled about in the expectation of seeing an Ascended Master at one of those meetings—nor was there any reason for them doing so. As far as the teachings are concerned, it was not necessary to attend meetings held by the Ballards in order to see an Ascended Master. His appearance depended upon harmony and perfection on the part

of the students and upon nothing else. Furthermore the Government does not even pretend to offer any evidence that any fixed time or place was ever set for the appearance of an Ascended Master.

While it is true the defendants did explain the fact that appearances had not yet been made by the Ascended Masters to be due to lack of attainment of necessary harmony, this most assuredly was not offered as an excuse for failure to appear at any alleged specific time or place.

(10) Forbiddance of Criticism. (Subdivision 17.)

Subdivision 17 alleges that the defendants falsely represented that any person who criticized or questioned the teachings of the defendants would be denounced and punished by the Ascended Masters and that they thereby created fear, confusion and obedience among the followers.

In this Activity, as in any other religion, there existed the opinion and belief that these particular teachings were most helpful and useful for the salvation of mankind. This tenet among religious movements is almost universal. The usual situation is that the particular sect recognizes that others may, by a different course, reach the same ultimate goal, but its members are usually exceedingly sorry for those persons who, having had revealed to them the best means of obtaining salvation, nevertheless doubt or fail to conform.

It may be admitted that the "I AM" Activity was not free from that trait. It too taught that those who were pretending to be students had better never been born than to continue with any deceit toward the work. ("The

Voice"—August, 1939, p. 10, Exhibit 52.) It was also said in a discourse to the students, at page 16:

> "* * * Better had a rattlesnake woven itself in among you than the poisonous breath of doubt. * * * Ones who doubt today and deprive themselves of their freedom in this embodiment will wait a long, long time."

But the reaction of the Ascended Masters toward persons who did nevertheless doubt, was pity rather than denunciation and punishment, as alleged by the Government. Saint Germain stated, in a discourse, to be found in "The Voice" for February, 1936, at page 14 (Exhibit 10) that his heart went out to the few beloved students of the Light who had allowed themselves to temporarily turn aside from the Light,

> "but such is the free will of the individual and we can only call their 'Mighty I AM Presence' into action to protect and bless them and one day again bring them back into this understanding of the 'Mighty I AM Presence' which is their freedom."

We would say that the foregoing is a rather less forceful statement than any of those contained in the Bible. (See quotation in subdivision 3, *supra*.) Furthermore, it is a fundamental tenet of the Activity that the Ascended Masters do not use a destructive force toward individuals. It is taught that vicious forces operating among people will, on some occasions, be turned back upon them to operate to their own detriment; but it is a destructive force created by themselves and brought upon themselves as a result of their activity. ("Unveiled Mysteries"—p. 25, Exhibit 3.)

Where persons are engaged in a particularly vicious activity toward the work Saint Germain has warned them that they will create an entity which will destroy themselves and close the door to the assistance of the Ascended Masters [R. p. 853]; that by such activities they will, unless they call upon the Law of Forgiveness, deprive themselves of their opportunity in the next embodiment. [R. p. 743.]

However it will be observed from the above that although the defendants and students believed that the teachings of the Activity are those best suited to obtain salvation, it was not taught as charged by the Government that those who criticize would be denounced or punished except as to such punishment as would result from no longer having the assistance of the Ascended Masters and the benefit of the Laws.

(11) Promise of Ascension.
(Subdivision 18.)

Subdivision 18 alleges that the defendants represented that if persons would follow the principles, doctrines and precepts of the "I AM" Activity and the teachings of the defendants, that prior to death said persons would achieve the ability to make their actual physical ascension in their physical, tangible bodies and would, in fact, ascend and not die, and during such ascension said persons would have the ability to and would associate with divine entities and Ascended Masters and would, at their pleasure, be able to return from their ascended position to earth and reascend if they so desired; that in fact persons who had accepted the teachings and doctrines taught by the defendants had so ascended.

It would probably astound those who believe that we have religious freedom in this country to be told that an important part of this mail fraud case involved the determination of whether or not the leaders of a certain religious Activity taught that when we die the physical body, as we know it, would ascend, or whether they taught only that the purified portions of the human body would ascend. Yet hundreds of folios of testimony during the trial of this case were devoted to an investigation of the Activity's doctrine and dogma for the purpose of determining whether or not the Activity had, at some time or another, altered its belief with respect to ascension. Nevertheless, in this trial 21 witnesses were examined on this subject; on 65 different occasions in the course of the trial the issue was raised. In addition, numerous tracts were read by the prosecution which related to the subject. This situation would not be so astounding if the prosecution were instigated by some community of religious bigots. But it makes one skeptical as to the progress that has been made in the matter of religious liberty when we find that the instigator is the Federal Government, organized, among other things, to guard and protect the religious liberty of its people. The Government asserts that the defendants *falsely* represented that students would achieve the ability to make a physical ascension and falsely represented that they would be able to associate with Divine Entities.

We believe we are entitled to infer from the fact that the Government charges these representations of ascension untrue, that it can establish what is true in respect to ascension. We hope counsel for the Government will enlighten us as to what kind of ascension is possible. Is

it or is it not possible for persons to make a physical ascension? Ordinarily a person who charges another with false representations has some inkling in respect to the true factual situation.

If we are to have religious freedom then none should be required to come before an arm of the Government and, in effect, *prove* the basis upon which it holds out to its people the hope of a life in the Hereafter.

The Government complains that this particular sect taught that if one attained perfection one could accomplish a physical ascension in one's tangible body after death. In the eyes of the particular United States attorney in charge, to hold out such a hope was to offer more than, in his eyes, was proper. The difficulties he must encounter in determining just what belief regarding ascension be satisfactory must be tremendous.

The Government complains that the Activity's tenets concerning the ascension of students who attain perfection or near perfection was changed on or about December, of 1938; prior to that time the Activity had taught, in accordance with the discourses of the Ascended Masters, that the purified body would ascend. Discords and imperfections melt away. ("The Voice"—May, 1936, p. 13, Exhibit 13.) It was never taught that the physical body, as we know it to exist would ascend—the finer part of the flesh body ascends and is absorbed into the higher mental body—transfiguration from the human into the Divine takes place and all appearance of age leaves the face and body. ("The Voice"—February, 1937, p. 3, Exhibit 22.)

In December of 1938, the Ascended Master Saint Germain gave a discourse wherein it was stated that where-

as in the past ascension could be made only by taking the purified physical body into the higher mental body, through the intercession of certain Ascended Masters, a gift of love was being offered to mankind. This gift is what is discussed in the record as "The New Dispensation." Under it, according to the discourse by Saint Germain, persons not otherwise able to complete the ascension in this embodiment would be able to do so, the purified essence of the physical body being turned into the etheric body. In that case the outer structure—the discord—of the human form remains on earth. ("The Voice"—December, 1938, p. 5, Exhibit 44.)

The defendants made no representations that the physical body, in its ordinary state, would ascend. It was always taught that it was merely the etheric body, composed of the finest of the physical substance. ("The Voice"—March, 1940, p. 33, Exhibit 59.)

In any event we respectfully submit to this Court that whether these defendants taught that the physical, tangible body ascended or whether they taught that an etheric or spiritual body ascended, a representation of a religious sect in relation to that subject is not a proper basis for a mail fraud indictment!

We have now discussed with as much particularity as the length of this brief permits, each and all of the representations upon which the Government relies in its indictment. Throughout the trial the Government continually sought to infer that because financial assistance was obtained by the sale of books in the course of the Activity and from love gifts, the Activity was not a *bona fide* religious organization, but a scheme on the part of the Ballards to defraud the public.

Of necessity there must be a certain amount of commercialism in connection with every religious activity in order for it to remain active and to promulgate its faith. It is a matter of judicial cognizance that some religious sects have become financially powerful and wealthy and have become the owners of vast amounts of land and property. No church can sustain itself, carry on the missionary work which all deem imperative, without having, as a part of its plan, a financial organization capable of supporting those activities. Millions of dollars worth of assets are held by churches throughout America which are not used for religious purposes but are none the less exempt from taxation by many of the political subdivisions and in order to assist in the maintenance of the religious work. This right of a religion to collect funds in the propagation of its faith has been recognized by the Supreme Court as an integral part of the right to freedom of religious worship. (*Jones v. Opelika, supra.*)

For a church or religious group to make a profit on its activities does not in any wise raise an inference that it is not proceeding in good faith. During argument in the trial court, counsel often stated that Jesus, in His lifetime, did not do thus and so in respect to financial matters. This is an argument which could be leveled at all but a few of the religious sects existing in this country. History and experience, however, have taught that this is not a bad condition but rather a good one, and religion has been fostered and propagated with much greater rapidity where financial means are available for that purpose than is otherwise possible.

Notwithstanding the Ballards were the leaders of the Activity, there were no direct means existing for their

maintenance or with which to carry on the activities connected with the organization. The expenses were not light. Mr. Crouse, a Government witness, testified that the staff which went with the classes numbered 12 to 13 persons. [R. p. 584.] He also testified that approximately 14 classes, lasting about ten days, were held during each of the years 1937, 1938 and 1939. [R. p. 562.] During those classes and for the considerable period between them the organization was maintained entirely through love gifts received at the classes or from groups and from the sale of books and religious articles. The groups throughout the country maintaining the sanctuaries and reading rooms were under no obligation whatsoever to contribute one dime to the organization, and they made no accounting or payments to the Ballards. [R. pp. 817, 465, 1010, 994, 991.] Of course if a student desired to give the Ballards a love gift through the group, such gifts would be forwarded, but otherwise, as Mr. Crouse put it:

> "* * * The groups were not required to turn anything over to the Ballards, except that they paid for the books and paid for their transcription records, and so on. No dues or initiation fees were charged at the group meetings." [R. pp. 584-5.]

In fact, no dues or initiation fees were charged at *any* meetings or classes, or at all.

If the Government were correct in its contention that the Activity is a fraud to permit defendants to take financial advantage of its members, one would expect surely to find a carefully compiled and fully indexed list of students who could be fully and carefully exploited by the defendants. It is significant, therefore, in view of the Government's contention, to find that no list of the

students of this Activity was ever kept by the Ballards. Mr. Sieber testified in connection with a request made by him of the Ballards for a list of the students:

"* * * I got word back that they didn't keep a list of students." [R. p. 328.]

There is no dispute in the record on this point either.

We do not understand the Government's objection to members of this particular Activity contributing directly or through the purchase of books to the maintenance of their leaders and of their organization. Money is constantly requested of the members in every religious denomination. Few, if any, fail to pass a collection box at least once during services—some more often.

The Bible teaches we should give one-tenth of our earnings as tithing to the House of the Lord. (Malachi, Chap. 3, verse 9; Leviticus, Chap. 27, verse 32.)

In the Catholic church at least one collection is taken each year from churches all over the world for support of the Papal state.

Nor is it uncommon that heads of a religious sect should be supported comfortably rather than niggardly. This seems to be a matter of the ability of the particular sect to supply the means, rather than any dogma that the support should not be generous. For instance, the minister of one congregation of one denomination located in the City of Los Angeles received a salary of $16,000.00 per year. (Time Magazine—August 3, 1942.)

According to Mr. Crouse, the average gift per person at classes was approximately the sum of 8¢. From the gifts, not only the traveling and living expenses of the

Ballards had to be paid, but the rental of the auditorium and incidental expenses. Mr. Crouse testified:

> "Sometimes the expenses of conducting the classes was greater than the amount received from love gifts." [R. p. 584.]

We do not wish to be understood as representing to the Court that this was generally true, as such is not the case. Assuming the student purchased a set of books for $15.00, or whatever they cost, and subscribed to "The Voice," in which the organization had no direct financial interest, and contributed to his particular group, his total contributions during the year (all of which would be entirely voluntary, as pointed out hereinafter) would certainly compare very favorably with that expected by other denominations. It would be far less than the tithing sanctioned by the Bible and expected by some denominations.

What was done with the money received by the Ballards? Do they have large accumulations invested in other ventures? One would surely surmise so by the position of the Government. But the record in the case is directly to the contrary. Mrs. Ballard stated that all money received was used in the promulgation of the Activity. [R. pp. 1140; 1136.] The Government never proved, either directly or by inference, that that statement of Mrs. Ballard is not absolutely true and correct. The witnesses called by the Government testified in support of that statement. Mr. Rogers, a Government witness, stated that it seemed to him that the money received was used in the promulgation of the religion. [R. p. 375.]

Originally the meetings held by the Activity were open, but, as they were molested and interfered with by various persons, and the meetings disturbed, they asked those who

wished to attend to sign what is called "Condition of Acceptance" [Government Exhibit 87] of the teachings. We wish to quote certain portions of that document.

> "At no time is there ever to be a price set upon them (referring to teachings) or money to be connected with them in any way. THE LIGHT NEVER WAS AND NEVER WILL BE BOUGHT BY ANYONE'S DOLLARS."

Mrs. Ferguson, a Government witness who, with her husband, had been a group leader in the Activity, considered the "Conditions of Acceptance" so severe in respect to money matters, that it would tend to prevent the Activity from receiving sufficient money for its support and maintenance. [R. p. 860.] In a pamphlet entitled "I AM Group Leaders' Instruction" [Exhibit 67, p. 13] it is stated, under the title "Financial Regulation":

> "Under no circumstances ever ask for money. Do not send out letters asking people for money or assistance of any kind. Saint Germain said in the beginning that this Teaching must never be commercialized for private profit. Do not allow the Student body to be preyed upon by any commercial activity for any reason at all. Do not ask for a dime."

Under "Instructions to Group Leaders", dated January 3, 1939 [Exhibit 186], under the title "Finances", it is further stated:

> "Never under any circumstances is any fee to be charged for anything done as a part of the 'I AM' Activity. Never at any time are any money schemes to be used for the support of any Group Activity * * * Under no circumstances may any request be made for money. Love Gift boxes may be placed

where it is convenient for the students to use them, but never should COLLECTION be taken for any purpose."

The foregoing express the steadfast policy of the Activity.

Nor was anything shown in respect to the personal conduct of the Ballards of a substantial character to indicate that the Ballards were not in good faith in their propagation of this religion. As stated above, notwithstanding the charge of the Government that defendants represented that they were selected by reason of their exemplary character (which, incidentally, we have shown is not a true statement of the belief of the defendants) the Government wholly failed to prove conduct on their part which was not upright and proper. It is significant that they have devoted their entire time for a number of years exclusively to this work. In other words, they have adopted it as their life work. Through one means or another the Government obtained possession of considerable correspondence written by the defendants to persons intimately connected with them. If, as contended by the Government, the Activity was a fraud upon the public, one would expect to find therein numerous damaging statements to the effect that the whole matter was a fraud and details of the devious methods the conspirators expected to employ in the consummation of it. Certainly, this correspondence was not written for the benefit of the public. It was private correspondence, written in some cases from a mother to her son. In such we should find the real thoughts of these people and what they really believed.

First, let us consider correspondence between Mr. Ballard and Harry Sieber. It will be recalled that Mr. Sieber

was the person who originally suggested the idea of holding classes outside of Chicago and throughout the East, made arrangements for the holding of those classes, and made all necessary financial arrangements.

In a letter written by Mr. Ballard to Mr. Sieber on September 16, 1934 [Exhibit 69, R. 274], after stating that they were still making an effort to obtain sufficient funds to publish "The Magic Presence" and the next edition of "Unveiled Mysteries", Mr. Ballard states:

> "* * * It will come from the right channel which the 'I AM PRESENCE' knows."

The letter to Mr. Sieber concludes with the following:

> "We enfold you and your blessed family in our deepest love and blessings and all the good the 'MIGHTY I AM PRESENCE' holds and we know only that 'MIGHT LIGHT' does everything through us all to manifest the Fullness of Its Perfection and Plan.
>
> "Lovingly in the Presence and Service of the Mighty I Am,
>
> G. W. Ballard."

On September 30, 1934, Mr. Sieber received a letter from the Ballards. After stating therein that he is confident Sieber will be guided unerringly by The Presence and by the Ascended Masters, Ballard states further:

> "* * * This is an invincible, All-powerful 'Presence' that moves before you with a sceptor of dominion that clears the way and is the 'LIGHT OF GOD THAT NEVER FAILS'." [Exhibit 71, R. p. 279.]

Other letters are of like import. [Exhibit 88, R. p. 312.]

The letters from Mr. Sieber to Mr. and Mrs. Ballard are in like tenor. They likewise disclose the desire on his part to spread the teachings of the "I AM" as rapidly and as far as possible.

In a letter written to the Ballards by Mr. Sieber on September 19, 1934, he concludes as follows [Exhibit B, R. p. 323]:

> "With all the love in the world and in happy service to the Mighty I AM Presence, and asking only to be used more and more each day in this Mighty I AM Service,".

In another letter [Exhibit C, R. p. 325] he states in part:

> "* * * I feel that I know so many souls who are just aching to get what you have to give and that they should have it. I feel that this wonderful work should be spread faster and I believe and feel I could do a lot to help in that respect."

It was in that letter that he asked the Ballards if it would not be possible and advisable for them to travel from city to city "spreading this truth which is so mighty and great". He concludes the letter with the following:

> "The basic thing I am interested in is getting before as many good souls as quickly as possible the wonderful message you have to give."

We turn next to correspondence which is of a more intimate nature, and which correspondence took place at about the time the Government maintains that the conspiracy was forming. They are the so-called Shasta letters, written by Mr. Ballard to his wife. Certainly, by no stretch of the imagination were these letters written for

public consumption. In a letter written by Mr. Ballard over his pen name "Ray" on August 11, 1930 [Exhibit 203, R. p. 844] he states that as he reads Volume 2 of Spauldings he finds it more and more wonderful. He states that he had been reading and had gone down to the store; that when he returned, the book was open at a point several pages from where he had been reading and at a page where occurred the statement "All are inspired by God, when that inspiration is for good or right, and all can be inspired by God at all times if they only will." He states concerning the incident:

> "So I know it was a direct message to me. It is so ridiculous to think the Almight . . . . God in us cannot do instantly what ever we desire to do that is good. It is all a matter of concentration & Stillness."

In a letter written on September 29, 1930 [Exhibit 203, R. p. 845] of a similar nature, he states that a certain message contained in a lecture was:

> "* * * a direct message to me, Through the eyes of Spirit—perfect vision—I behold all things and Persons as they exist in Truth.
>
> "In Unveiled Mysteries, I sure have been doing just that."

On October 1, 1930, he wrote to his wife as follows [Exhibit 203, R. p. 847]:

> "* * * I have Just taken down three typed pages of the most marvelous words ever uttered it seems to me by the Being who Officiated there Sixteen Thousand Years ago, I think this is the place once intimated to us, I began this morning and dident stop until after three—dident dare to stop less I loose the connection it is simply marvelous."

The above is stated by him concerning certain experiences on the Madiera branch of the Amazon.

In a letter of September 4, 1930 [Exhibit 203, R. p. 848] he states concerning certain experiences set forth in Spaulding's books:

> "* * * Gee how like mine was his experience, yet notice how he says the great law vindicated him, its wonderful."

We turn next to letters between Mrs. Ballard and her son. On May 1, 1937 Mrs. Ballard wrote to her son concerning some intemperate statements apparently contained in the boy's letter and concerning a criticism that Donald had made of the 100% pledge to be signed by members who desired to sign it. Concerning the contents of the letter written by the son, Mrs. Ballard states [Exhibit 151, R. p. 598]:

> "Saint Germain was so shocked when he read your letter that he is considering a very serious move concerning you."

In regard to the pledge she states [R. p. 599]:

> "Please know Donny Dear that the pledge that the 100% groups are to sign has been inspired and made necessary by the call of the students for the tangible Presence of one or more of the Ascended Masters. The Great Divine Director brought it about because of certain Inner work He Wants to do for the protection of America."

Is it not most peculiar that a person the Government has convinced a jury did not believe the things they taught, would write the following:

> "Please make your peace with your Presence and Saint Germain before it is too late to remedy it in this embodiment. I hope you will not waste all that I have tried to do for you in this Lifetime, not to mention what Saint Germain and Daddy have done." [R. p. 600.]

On November 13, 1939, Mrs. Ballard wrote a letter to her son and daughter-in-law, Marjorie, and Marjorie's mother and Louise Majerus. She states in that letter the following concerning a class which has just closed [Exhibit 153, R. p. 604]:

> "* * * We had the most marvelous class in our history and when we closed last night the love was so great the entire audience kneeled to the Light as we came in. I thought my heart would burst with the out-pouring of Light to the students and the desire to help them. There never was a class like it and Saint Germain said it was the most successful class of all so far as their work was concerned."

We ask the Court to note also the balance of that letter, indicating confidence and belief in the calls, precipitation and ascension. [See Appendix, p. 7.]

Clearly the Government wholly failed to prove the lack of good faith of the defendants by the introduction of the foregoing letters. They constitute abundant proof to the contrary.

In considering the evidence introduced by the Government to support the indictment, we have discussed as many of the tenets of the Activity as is practicable here. We feel it is clear from what has been said that the Government in making its charges was in many instances acting under a lack of understanding of the tenets involved. The Government's position is, in effect, if ascension is taught by one of the older religions it is proper; if taught by the "I AM" Activity it is a scheme to defraud. In other words, the obsession of the Government is that each tenet of the "I AM" Activity was conceived for the purpose of alluring and defrauding members. It is significant to note in this connection that there are one or two other rules and tenets of the religion which the Government does not emphasize—to wit—abstinence from the use of tobacco and alcoholic beverages and over-indulgence in sex. If the tenets and rules of conduct of the Activity were conceived in bad faith, and taught in bad faith for financial gain, why were such doctrines of self-restraint and self-denial included therein? We hope the Government will enlighten us as to why this Activity, which it has so glibly denominated a scheme to defraud and whose tenets are based solely upon their allure, has, as its basic doctrines, restraint, denial and exemplary conduct.

The Government's case in its entirety is predicated upon inferences which it seeks to draw that certain of the tenets of the Activity were included therein as part of a fraudulent scheme. These inferences are no more deducible as

pertains to the "I AM" Activity than would a similar inference be deducible as to other older and more established religions preaching similar beliefs. Such is not the evidence which will sustain a criminal conviction, for it is the settled rule that:

> "Unless there is substantial evidence of facts which exclude every other hypothesis but that of guilt, it is the duty of the trial judge to instruct the jury to return a verdict for the accused, and where all the substantial evidence is as consistent with innocence as with guilt, it is the duty of this court to reverse a judgment against the plaintiffs in error."
>
> *Nosowitz v. United States* (Second Circuit), 282 Fed. 575 at 578.

See, also, to the same effect;

Hart v. United States (Third Circuit), 84 Fed. 799;

Garst v. United States (Fourth Circuit), 180 Fed. 339;

Donahur v. United States (Eighth Circuit), 39 Fed. (2d) 325;

Benn v. United States (Ninth Circuit), 21 Fed. (2d) 962;

West v. United States (Tenth Circuit), 68 Fed. (2d) 96.

ARGUMENT V.

Improper Argument and Remarks of Counsel Would Require a Reversal of the Judgment of the Trial Court.

Defendants assigned as error herein the action of the District Court in allowing and permitting the counsel for the Government to make inflammatory, prejudicial and improper remarks before the jury. [Assignments 13 and 32; R. pp. 194 and 206-7.] At virtually the outset of the argument by the Government, Mr. Lazarus, one of Government counsel, stated to the jury:

> "The Government claims in this case though, gentlemen, that this Ballard racket, as we might refer to it now in argument, is a flim flam scheme that has been unparalleled in history. These defendants here have been the most successful fakers in the knowledge of the history of fakery, and I think that is a tribute to the principal organizer, Edna W. Ballard." [R. pp. 1178-9.]

Defense counsel attempted to prevent argument of this character by objecting to the foregoing statement. However, the trial court, instead of sustaining the objection, stated he intended to allow the fullest argument on either side and his ruling was such as to make it apparent it would have been futile to have made further objections when counsel for the Government indulged in like arguments. In view of the statement of the court [R. pp. 1180-1181], further objection would undoubtedly have appeared to the jury to be not only improper, but impertinent. That to do so may create prejudice rather than remove it is recognized in *London Guarantee v. Woelfle*, 83 Fed. (2d) 325.

Undoubtedly the leading case on the necessity of making objection to improper argument of counsel is *New York Central R. R. Co. v. Johnson*, 279 U. S. 310, 73 L. Ed. 706. In that case it is held that litigation, even private litigation, is a matter of public importance in which the state has an interest to see that the trial be fairly and impartially conducted; that such public interest requires the Court, of its own motion, to protect suitors in their right to a verdict uninfluenced by appeals of counsel to passion and prejudice.

To the same effect see:

Pierce v. United States, 86 Fed. (2d) 949;

Volkmor v. United States, 13 Fed. (2d) 594;

Rouse v. Burnham, 51 Fed. (2d) 709;

Kasson v. United States, 87 Fed. (2d) 183;

London Guar. etc. Co. v. Woelfle, 83 Fed. (2d) 325;

Chicago etc. v. Kelly, 74 Fed. (2d) 31;

Aetna Life Ins. Co. v. Kelly, 70 Fed. (2d) 589;

Union Elec. Light etc. v. Schneider Est., 65 Fed. (2d) 297.

In the last named case the Court states at page 302:

"The trial judge should be vigilant to protect suitors in their right to a verdict uninfluenced to improper remarks and appeals to passion and prejudice."

In the case at bar the misconduct of the prosecuting attorneys was not limited to the arguments but includes other actions during the trial. The misconduct was such that harm had been done which admonitions would not have been sufficient to cure. Under such circumstances

a defendant is entitled to reversal irrespective of an objection and notwithstanding that the jury is instructed and counsel reproved. (*Volkmor v. U. S.*, 13 Fed. (2d) 594.)

We now proceed to consider what constitutes proper and improper argument.

It is said in *London Guar. etc. Co. v. Woelfle*, *supra*, 83 Fed. (2d) 325, at 342:

> "In the trial of cases to a jury in the Federal Courts the arguments of counsel *must* be confined to the issues of the case, the applicable law, the pertinent evidence and such legitimate inferences as may properly be drawn therefrom."

Concerning the duty and obligation of the prosecuting attorney in a criminal case, perhaps the best statement is to be found in the leading case of *Berger v. United States*, 295 U. S. 78, 79 L. Ed. 13, 14 S. Ct. 629 (p. 88):

> "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

"It is fair to say that the average jury, in a greater or less degree, has confidence that these obligations, which so plainly rest upon the prosecuting attorney, will be faithfully observed. Consequently, improper suggestions, insinuations and, especially, assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none."

We wish to point out that the actions of the Government attorneys were not merely inadvertencies occurring in the heat of argument which is, as has been said, sometimes excused on that ground, but for the most part constitute a studied effort to accomplish the result which we believe was actually accomplished, to wit, a miscarriage of justice. They ran the gauntlet of arguments which has been held time and again to be improper. They may be grouped as follows:

(a) Denunciation of the defendants;

(b) Seeking, through argument, to create a prejudice on the part of the jury against the defendants;

(c) Warnings that a conviction is necessary to prevent further law violations.

(d) Improper suggestions, insinuations and assertions of personal knowledge by counsel.

Referring to group (a), the denunciation of the defendants did not stop with the original statement set forth above to the effect Mrs. Ballard was a flim flam faker, but rather counsel seemed to have been encouraged by the failure and neglect of the Court to reprove such misconduct at the outset. Mr. Neukom, in discussing the teachings of the Activity concerning the retention and regain-

ing of energy by right living, stated to the jury that if the defendants believed that by proper living and proper faith a person 60 years of age may regain the fullest bloom of youth and

> "* * * you can't make it work on yourself, you can't keep yourself from dying—you can save everyone else in the world but your religion isn't good enough for you—then you are a falsifier—and if the word rings, I don't care—*you are a cheat, you are a charlatan, and you are a religious racketeer, and I mean it.* I haven't just tried to throw words at you; I have given you evidence." [R. pp. 1540-41.]

They were called fakes and frauds a third time [R. p. 1283; see also p. 1267] and counsel constantly followed the name or reference to Mrs. Ballard with the words, "glib", or "adept prevaricator." [R. pp. 1244-5; 1318.] A trial is in no sense a name calling contest. A prosecuting attorney is not performing his duty to protect the rights of a defendant when he goes before a jury and calls the defendant "the most successful faker in the history of fakery"—"A cheat", "a charlatan" and "a religious racketeer." But entirely aside from that, we ask the Court to consider the last mentioned remarks in the light of the statement which precedes them. The defendants are cheats, charlatans and religious racketeers if they cannot obtain visible and physical proof of their teachings upon their own person. *The ring of that statement is faintly familiar. Isn't it about what was said of Christ while He was on the cross—that if He was the Son of*

God he should come down and prove it! In describing Christ's crucifixion, while He was on the cross the elders, taunting Him, cried: "He saved others; Himself He cannot save. If He be the King of Israel let Him now come down from the cross and we will believe Him." (Matthew 27:42.)

Similar denunciation has uniformly resulted in the reversal of verdicts. In *Volkmor v. United States*, 13 Fed. (2d) 594, the prosecuting attorney called the defendant a "skunk"—"A weak faced weasel", "a cheap, scaly, slimy crook". The judgment was reversed upon the ground of improper argument of counsel. The error was considered so serious as to have affected the minds of the jury, despite attempted correction by counsel and Court.

In *Rouse v. Burnham*, 51 Fed. (2d) 709, the plaintiff's attorney called a physician a "crooked doctor", stated that another one of the defendants had "all the earmarks of a common, ordinary, enthusiastic liar" and referred to parties as "rascals and scoundrels". Concerning the foregoing, and statements of a less vitriolic nature, the Court states:

> "* * * Conduct of plaintiff's counsel was not only improper, it was reversible error."

In *London Guar. etc. Co. v. Woelfle*, 83 Fed. (2d) 325, at 339, the verdict was reversed for remarks of counsel, the most serious of which was a statement that the doctors for the insurance company "stood there like a bunch of sharks * * *"

In the course of the argument counsel made other demands for physical demonstration of the efficacy of the

defendants' teachings concerning the supernatural. In one instance counsel combined with such demand an argument intended to arouse prejudices by reference to losses by poor persons. Counsel stated:

> "* * * and I submit, gentlemen, that if it is such that the Ballards, as the accredited messengers of the ascended masters, those mighty people who have never made any mistakes, those perfect beings, should have been able to precipitate and should have been able to precipitate some of their needs instead of taking money from poor people who had given much more than frequently they could afford to this movement through love gifts and through the purchase of books."

The same argument used concerning regaining youthful energy was used in connection with precipitation—that the defendants were cheats and frauds unless they could produce by physical demonstration proof of the things they taught. One of counsel for the Government argued as follows:

> "Betty Mundy has no doubt, Louise Majerus has no doubt, Donald Ballard is one of the accredited messengers of the ascended masters, and he certainly has no doubt, and Mrs. Ballard, as the big-wig, the chief, of the entire organization, certainly could have no doubt whatsoever—to say nothing of William Cassiere and Paul Stickell, those traveling salesmen for the Ballards, *they certainly would have no doubt —yet, gentlemen, have they managed to precipitate gold or jewels? If they have, I submit that we should have been told about it here in court. Possibly we should have had an example of such precipitation shown us.*"

At a later point counsel stated concerning one of the members:

> "* * * He himself had not been able to precipitate, apparently because he was not sufficiently pure. That same dog chasing that same tail. And yet Paul Stickell was sufficiently pure to be appointed a messenger of Saint Germain."

We see in this example again an attempt on the part of Government counsel to convince the jury that inability of the defendants to give physical demonstration by a supernatural sign of their religion was proof of fraud. We submit that such form of argument concerning tenets of a religion is palpably erroneous.

Referring to group (b) above, we wish next to consider statements of counsel, which were made for the purpose of creating prejudice. In this case, perhaps, more than in any other, the prosecuting attorneys should have made it a point to conduct themselves with the utmost of decorum and tried the case in a dispassionate, dignified and orderly manner. *Of all cases where prejudice may be most readily created, religion* is in the forefront. Consequently, a special duty rested upon the prosecution in trying the case at bar. Did they fulfill it? Was their conduct such that the defendants had a fair and impartial trial, or did the prosecutors, by holding the defendants' religious beliefs up to ridicule at every opportunity create such prejudice against them whenever possible and, as a result, cause the jury to lose sight of the real issue? In considering what occurred we must bear in mind that at the very outset the defendants were given to understand that their religious beliefs were not matters for the consideration of the jury. The attack

on the religious beliefs permeates the whole argument and we, of course, can only point out the more salient examples.

We first call the Court's attention to the interrogation of Mrs. Ballard on cross-examination. Mr. Lazarus, while asking Mrs. Ballard concerning the Activity's belief, said [R. 1155]:

> "Have you ever read Grimm's Fairy Tales, Mrs. Ballard?"

Later, in the same examination, while the possibility of cataclysms in this portion of the country and the possibility of preventing such calamities by prayer and right living on the part of the people was being discussed, Mr. Lazarus asked the question [R. 1160]:

> "Mrs. Ballard, were you around San Francisco during the earthquake of 1906?"

The questions were directed solely for the purpose of ridicule. During the argument, the prosecution went to greater extremes in ridiculing the beliefs of the defendants.

In discussing the ascended master Saint Germain before the jury, Mr. Neukom stated:

> "Now, this is Saint Germain talking—Saint Germain—Mrs. Ballard's Charlie McCarthy, the most convenient thing you ever saw." [R. 1503.]

On another occasion, Mr. Lazarus read from the May, 1936, issue of "The Voice" (Exhibit 13), as follows:

> "All should understand that when one had made his ascension he becomes a Wholly Perfect Being of such Purity and Radiance that all who contact him

realize that he is superior in every way to all other beings. He can 'take his body anywhere he desires instantly' * * *

"* * * the gravity pull of earth can no longer affect it. The body rises in the atmosphere and follows the thought, going instantly wherever the individual desires. By proper application the individual can release into and through his body the Light needed to increase the vibratory action to the point where the body can rise into the air and become invisible or visible as the Ascended Masters are able to do.'"

He then stated:

"That sounds as though it came from Donald Ballard and his 'Popular Mechanics.'" [R. 1237.]

Mr. Lazarus insisted on comparing the teachings of the Activity to the antics of the characters in the funny papers. At page 1237 of the Record, in discussing ascension, he stated concerning it:

"* * * you just sort of rise up in the air and would be able to come back and forth as you desired, become invisible or visible, as you wished. Superman does that frequently, and it is a very interesting and exciting sort of thing. * * *"

Counsel for the Government apparently believed it to be a very effective form of mockery and ridicule to compare the religious characters in this religion to the characters in the funny paper. It will be found that Government counsel again stated to the jury [R. 1211]:

"We find it is very much related to Superman and Flash Gordon in the funny papers. Incidentally,

> they are two of my favorite comic strips. I am sure many other people have read those. Especially K-17 reminds me of Superman."

We agree that such argument is indeed effective. The question, however, is whether or not it is permissible. If in the trial of one believing in any one of the dominant Christian religions more firmly established, such statements were made concerning the ascension of Jesus, the error in so doing would be so apparent as not to require comment. Yet, if this religion is entitled to the equal protection of the law, what possible excuse can there be for arguments of the character made? Certainly, it should not be the rule in our courts that such statements when made in reference to the religion of the majority shall be considered blasphemous, but if made concerning a minority sect, they will be countenanced as proper zealousness of counsel for the Government.

It is error to make an argument which seeks to create a sectional, racial or religious prejudice: *New York Central R. R. Co. v. Johnson, supra; London Guar. etc. Co. v. Woelfle, supra;* or against a party because it is a large corporation: *Metropolitan Life Ins. Co. v. Banion,* 106 Fed. (2d) 561; *London Guar. etc. Co. v. Woelfle, supra.*

Counsel also resorted to the "widow and orphan" argument so often condemned by the courts. Mr. Lazarus stated [R. p. 1223]:

> "Few are villains enough to bilk and defraud those who are ailing spiritually and physically by telling them untruths throughout but I think, gentlemen, in this case we will find these defendants have been doing just that." (Recess.)

"Mr. Lazarus: Gentlemen of the jury, when we took up our recess we were about to discuss the subject matter of healing. We have gone into the experience of Margaret Huntley Schall who had given over a thousand dollars to this movement and originally was interested in an attempt to heal her husband's blindness. To the Government that is one of the most pitiful sides of this case."

It has been held in the following cases, and in many others, that arguments endeavoring to arouse prejudice by mentioning poor people who are alleged to have lost their money are erroneous.

London Guar. etc. Co. v. Woelfle, 83 Fed. (2d) 325;

Beck v. United States, 33 Fed. (2d) 107.

The foregoing argument was doubly improper in that Mr. Lazarus would have the jury think, contrary to the evidence, that Mrs. Schall contributed her money in the hope of healing her husband. This was not true in any sense. While she became interested in the Activity, as she had become interested in others, by reason of her husband's ailment, her husband was killed approximately two months after she first heard of the Ballards and her interest in the Activity and her contributions to the Activity, for the most part, commenced and continued thereafter. [R. pp. 395-6.] We have not quoted all of the argument above wherein Mr. Lazarus sought to arouse prejudice against the defendants by creating pity for Mrs. Schall along the same general lines. [See R. p. 1222.] Furthermore, there is no evidence in the case that those spiritually and physically ailing were bilked. No witnesses were introduced by the Government to so testify

and as we point out herein the testimony was uniformly to the contrary. (See Sufficiency of Evidence: "Healing" above.)

We quoted above an argument of counsel wherein counsel stated that they should have precipitated their needs instead of taking money from "poor people who had given more than frequently they could afford to this movement." It is likewise true in this particular that not only was the argument improper in any event, but it was highly improper in view of the lack of evidence to support any statement that poor people had given more than they could afford.

(c) Warning That Conviction Is Necessary to Prevent Law Violations.

It has been held improper to argue that to free a guilty man is "simply a red flag, you might say, to others engaging in law violations," and that to do this would "add flame to the already wave of crime that is sweeping the country." (*Turk v. United States*, 20 Fed. (2d) 129, at 131.) Concerning this type of argument the Court states:

> "* * * It is as fatal to a fair trial and a lawful conviction of a defendant by a jury that their verdict was for a wrong and unlawful reason as that it was caused by incompetent evidence or an erroneous charge."

See, also, to the same effect: *United States v. Sprengel*, 103 Fed. (2d) 876. This error in argument occurred in numerous instances. On one occasion Mr. Lazarus stated:

> "Let your verdict be a warning to those people who would be religious racketeers. Let's clean out

the money-changers from the temple. Let's let people know that whenever they go to worship their Maker, *their God Almighty*, that they are not in the clutches of those who would deceive them for their money under the false and fraudulent representations." [R. p. 1521.]

Again he stated:

"I want this part of the United States to no longer be the part that people more or less smirk about because of some ideas when people go forth and try to defraud someone under the name of God Almighty." [R. p. 1538.]

After conceding to the jury that they had the right to acquit the defendants if they felt they should do so, Mr. Neukom stated:

"* * * but I feel, and I would like to have you feel so, too, that your verdict be a warning to those who use false representations on the subject matter of religion as a means for their own personal gain." [R. p. 1544.]

After reading from an article in "The Voice" magazine wherein it is stated that the teachings of the "I AM" in the Western world would be through the Ballards, Mr. Lazarus stated:

"That almost makes you wonder who has the eastern rights if the Ballards have the western rights. And I assure you, gentlemen, if these defendants are found not guilty in this case and let off free, there will be many, many applications for the eastern rights." [R. p. 1213.]

Counsel urged a conviction to preserve our country for our fighting men. He stated:

> "You gentlemen are trying this case—this important case I might add—in very unusual times. The country is at war. And a case of this sort makes it devolve upon you here to see that the defendants are convicted if you find that they are guilty of fraud so that those who are fighting for our country will find that they have something to come back to worth fighting for." [R. p. 1324.]

See also R. pp. 1182-3.

(d) Improper Suggestions (Insinuations) and Assertions of Personal Knowledge by Counsel:

In the case of *Berger v. U. S., supra,* this Court held that because of the confidence which the average jury has that the prosecutor will perform his duty, improper suggestions and insinuations, and especially assertions of personal knowledge are apt to carry much weight against the accused when they should carry none. This same proposition is stated by Justice Roberts in the dissent in the case of *U. S. v. Socony Vacuum Oil,* 310 U. S. 150, as follows:

> "One of the most reprehensible things a prosecutor can do is to attempt to put into evidence before the jury his own, and his colleagues', opinion as to the guilt of the defendants he is prosecuting. Such a practice brings before the jury the unsworn testimony of a sworn officer of the Government. This fact lends it undue and improper weight and injects an element into the case which is so insidious and so

impossible to counteract that trial judges, in my experience, have never hesitated to withdraw a juror and declare a mistrial because of this violation of the canons."

While the majority in that case were of the view that the misconduct of counsel did not require reversal, the decision of the majority is not a departure from the rule laid down in the *Berger* case, the majority, or minority, merely differing on whether or not, in view of certain existing circumstances the misconduct constituted reversible error.

In *Minker v. U. S.*, 85 Fed. (2d) 427, where counsel offered to the jury his personal opinion on certain of the facts in the case, the court followed the decision in the *Berger* case, stating:

"We think the entire tenor of the prosecuting attorney's statements was decidedly and unfairly prejudicial."

In addition to the errors of counsel heretofore pointed out, counsel on numerous occasions offered their personal opinion on matters involved and not involved, and, in fact, in one instance one of Government counsel offered his unsworn testimony. He stated [R. p. 1242]:

"Now, what a cosmic light is, *I don't know*, but it sounds like a cataclysm to me. *And I know I was* here in Los Angeles on July 1, 1938, and July 17, 1938, and, cataclysm or not, *I know that* there wasn't any great wave of cosmic light striking at the Shrine Auditorium or any other place here at that time."

We quote the following as some of the instances wherein counsel gave his personal opinion in respect to divers matters:

"And there weren't three million or six million people in this movement I don't believe. I don't think there were. *I don't believe* she sold so many books. *I don't know* whether she sold a million or what she sold, *but I know* the take has been good and *I know that* the charity has been lean." [R. 1522.]

"If they have taken money from people under false pretenses, they have to bear the consequences. It isn't their build-up or their yachts. *I don't know whether* they have them or they haven't them. But they seem to have done pretty good, and they seem to have planned to do pretty good." [R. 1522.]

"I don't believe what they say. I have a right, the same as any other witness. They don't believe my witnesses. *I don't believe any witness of theirs,* but read the literature and see where you are right." [R. 1525.]

Again:

"I urge the students everywhere, with all the love at my command, to forget everything else you have ever studied.

"Jesus is speaking.

"What could they have in their minds other than but one thing—*I believe to forget the Holy Bible,* the books that they would now endeavor to comfort themselves with. That book will give them comfort, nor should that be deprived from them. But that shouldn't change the proposition that they have defrauded people and should suffer the consequences." [R. 1537.]

"Now, of course, if Mrs. Ballard actually did associate with the gods, you can well understand how these various people that joined the movement would join the movement; *but I don't think she did*, gentlemen, and *I don't think* the evidence shows that she did." [R. 1212.]

It must be borne in mind in this case the trial judge ruled that the case would be tried upon the assumption that the tenets of the "I AM" Activity were not to be involved, yet from the examples of argument which we have set forth above, it will be readily observed that the method of prosecuting attorneys was to ridicule those tenets as being wholly unworthy of belief. Their efforts were directed to making the religion of these people a laughing stock in the courtroom. The defendants are constantly abused as prevaricators and fakers. In addition Government counsel offered their opinion on divers subjects, and sought a conviction because poor people were alleged to have been defrauded, to warn others who might engage in fraudulent practices, and even to preserve the country for the return of our soldiers. We submit that the argument of counsel constituted a studied effort to create religious bias and prejudice against the defendants by means uniformly condemned by our courts. Even the numerous references set forth above do not constitute by any means all of the occasions where such misconduct occurred. [For additional references to statements of counsel, which we submit were not proper, R. pp. 1215, 1219, 1236, 1248, 1250, 1254, 1257, 1267, 1273, 1298, 1299, 1300.]

While every technical error does not warrant a reversal sometimes a single misstep will constitute reversible prejudice while in others slight transgressions may

be corrected. (*Pierce v. United States*, 86 Fed. (2d) 949; *Pharr v. United States*, 48 Fed. (2d) 767.) However, where it appears from the record that the presentation was permeated with prejudicial matter the judgment should be reversed (*Sunderland v. United States*, 19 Fed. (2d) 202) and this is particularly true where the objectionable matter is not through inadvertence but rather an intentional abuse. (*Volkmor v. United States, supra.*) Where a case is such that the Government's evidence is at most weak and only by inference, more consideration should be given to complaints concerning this type of error. (*Franz v. United States*, 62 Fed. (2d) 737.)

In the recent case of *Viereck v. U. S.*, 318 U. S. 236, this Court stated:

> "At a time when passion and prejudice are heightened by emotions stirred by our participation in a great war, we do not doubt that these remarks addressed to the jury were highly prejudicial, and that they were offensive to the dignity and good order with which all proceedings in court should be conducted. We think that the trial judge should have stopped counsel's discourse without waiting for an objection. 'The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor —indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper

methods calculated to produce a wrongful conviction as it is to use every ligitimate means to bring about a just one."

Assuming that the decision in the *Viereck* case is predicated upon the remarks quoted in a footnote to the decision, they are of the same nature but far less extensive than the remarks made by counsel in the case at bar. We submit that the prejudice which can be aroused in matters concerning religion, is equal to, if not greater than that which can be aroused in connection with war. Statements made by counsel in the *Viereck* case were reprehensible and amply justified the reversal. The counterpart of each of them will be found in the argument of counsel in this case and reversal is equally justified on this ground. In addition, in the case at bar, we have what was apparently absent in the *Viereck* case—a studied and continuous effort to create prejudice, wholly eliminating the possibility that the error arose as a result of temporary over-zealousness of Government counsel. Furthermore Government counsel stood before the jury and asked for a sign—for visible, physical proof of the supernatural, and labelled defendants frauds and fakers because none was presented. This, we submit, goes far beyond propriety and should not be countenanced in any court.

Respectfully submitted,

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Attorneys for Respondents.

APPENDIX.

"1937 Radio Broadcast No. 1.
"THE MIGHTY 'I AM PRESENCE'"

"The Cosmic Moment has struck, Beloved Ones of America, when the Ascended Masters call you to Victory and Freedom in the Light.

"Dear Ones, in this series of ten broadcasts, as I give you the ASCENDED MASTERS' INSTRUCTION on the 'Mighty I Am Presence,' which is the LAW OF LIFE, energy and vibration, you may wonder by what authority I give you this Mighty Knowledge. Mr. Ballard and I were chosen to be the Messengers of the Ascended Master, Saint Germain, because He has prepared us to render this service at this time.

"For more than thirty years, we both earnestly sought for the Truth of Life, knowing that there must be some underlying Law, which if found, would give us the Freedom we craved. The answer to our quest came in 1930, right here in your own glorious America, on the side of Mount Shasta, when Saint Germain, Who is One of the Great Ascended Masters, came forth to Mr. Ballard and made it possible for him to have the transcendent illuminating experiences which Mr. Ballard has recorded in his book, UNVEILED MYSTERIES, written under the pen name of Godfré Ray King. A few months later, in the beautiful Wyoming Rockies and the Grand Teton of Teton National Park, Mr. Ballard was shown and taught the marvels which he has recorded in his book, THE MAGIC PRESENCE.

"He was chosen by Saint Germain, because of previous association and preparation, to have and record these

experiences, that the people of America and the world might know and comprehend the Great unknown and unacknowledged Assistance which is now being given to mankind by Himself and the other Ascended Masters, in the face of seeming distress and disorder in the outer world. Through this Understanding, the Great Ascended Masters are trying to arouse the people of America to make conscious determined effort to neutralize the destructive forces that mankind has generated.

"If you wish to know upon what a magnificent plan the destiny of America is founded, and the benefits derived from a conscious understanding of the Ascended Masters' Law of Life, we point you to these two truly transcendent books—UNVEILED MYSTERIES and THE MAGIC PRESENCE. As explained in the Foreword, the exact names, locations, records and treasures, including dates, are withheld intentionally, at the command of Saint Germain, for reasons that are obvious.

"At the close of these experiences, Mr. Ballard returned to our home in Chicago where further explanation of this Mighty Law of Life—the 'Mighty I AM Presence'—was given to us by Saint Germain in person. In a series of seventy-three Discourses, He dictated the Ascended Master Instruction on the use of the Great Creative Word 'I AM,' and the 'Mighty I AM Presence' which is GOD IN ACTION.

"This Knowledge given to us was and is so sacred, so transcendent and so practical that Mr. Ballard, our son, Donald and I are devoting every moment of our lives to the giving of this Work to the people of America. We ask you not to believe a word we tell you, but to PROVE THE TRUTH OF EVERY WORD WE SAY. During the past two and one-half years, we have stood

before more than 225,000 people throughout most of the large cities of the United States of America and given forth this Instruction. We shall continue to do so, until all mankind is set free in the Knowledge of the 'Mighty I AM PRESENCE.'

"Tonight, let us turn our attention to the Understanding of this MIGHTY PRESENCE, the INDIVIDUALIZED GOD-SELF of EVERY HUMAN BEING.

"Down through the ages, mankind has thought of God as being everything from a kindly old gentleman sitting on a golden throne, to a great abstract principle or impersonal force working blindly and heartlessly throughout the world. We bring to you, dear ones, the Perfect logical, acceptable, heart-satisfying ETERNAL LAW AND TRUTH OF LIFE, THE TRUE EXPLANATION OF GOD, AS GIVEN US BY SAINT GERMAIN, JESUS AND THE OTHER ASCENDED MASTERS.

"From out the Heart Center of Infinity comes forth the Individualized Presence of God, clothed in a body of Pure Light Substance. This Electronic Body abides immediately above every human being on earth and pours down into the human form, the Life, the Light, the Substance and Energy that enables the physicial body to move, breathe and have Self-Conscious Life. This Individualized Focus of the Great Supreme Source of all Life, is the 'Mighty I AM Presence.' This is the GOD-SELF of every man. In this way, God—Life—governs the Universe by the Individualization of Itself, which every human being is in Reality.

"The withdrawing of this Presence of—the Life energy—from the human form is what we know in the outer physical world as death. The eyes and ears of the

body after so-called death, may remain in perfect form, yet the body can neither hear nor see; because the Great Stream of Energy which flows down from the Presence and allows the body to see, hear and move about, has withdrawn. This is what Jesus referred to when He said: 'Of Myself, I can do nothing. It is the Father within that doeth the works,' for He recognized and knew that Great Presence of God, the 'I AM,' and to It gave all acknowledgment in all accomplishment.

"The 'Mighty I AM Presence' of every individual, no matter what the worldly estate, is Almighty, Limitless Intelligence focused and dwelling in an Electronic Body of Blazing Pure Substance and Energy. This is the man referred to in the Bible, who is made in the Image and Likeness of God. It would have been a sad looking God indeed, if the human form of man was what had been referred to as God's Image; but now we KNOW that It is this Blazing God-Presence, dwelling immediately above every human form in full Perfection which is the Divine man.

"This Blazing Beautiful Presence is the GUARDIAN ANGEL, spoken of down through the centuries. Many individuals have gazed upon their own 'Mighty I AM Presence' and thought they were seeing a Glorious Being sent from God. This Individualized God-Self projects the Attributes of Itself down into the substance of the physical world, creates a body and operates it through the physical senses. It loans the physical body the use of certain attributes and endows it with an intellectual and Heart Consciousness, through which the God-Self should be allowed to expand Its Light and Perfection and which It always does, unless interfered with by discordant feeling.

"If you doubt that this Great God Presence stands willing and ready to fulfill every constructive wish of your heart, the Ascended Masters say to you: 'If you will call your Presence into action three times daily—earnestly—for five minutes, keeping your feelings harmonious, inside of ten days you would have the evidence in your own experience so strong that nothing could turn you aside.' Say to your Great God Presence WHICH IS ABOVE YOU: '"Mighty I AM Presence"! release into my world as Your Glad Free Gift of Love, this constructive thing which I so earnestly desire.' Do this three times a day for ten consecutive days with deep feeling, keeping yourself harmonized and the sure and certain answer to this call will be all the proof you will need, to know that what we tell you is the Eternal Truth—the LAW OF LIFE.

"The beautiful colored picture of this 'Mighty I AM Presence' appeared in the February Issue of this magazine. Through the use of this eye picture of the PRESENCE, you can more quickly comprehend It, and release Its Mighty Power in Its Fulness through your body to heal, bless and release Its Perfection out into your world and to all you contact.

"You may ask: 'If each human form has a Perfect God Presence pouring into it God's own Perfect Substance, why is not the human being the out-picturing of this full Perfection?'

"Here Blessed Ones, is the most illuminating Understanding of the LAW OF LIFE ever given to mankind. That Perfect substance and energy from the Presence, as It flows into the body of the individual, would remain Pure and Perfect and always out-picture Perfection; if it were not for the requalification, through discordant feeling an inharmony, with which the individual clothes

his God-given Energy. Our work as Messengers of Saint Germain, is to show you Blessed Ones, how you can, through harmonizing your feelings and recognizing this Pure God Energy, allow It to sweep into your bodies, in Its original pure state and full Power, to cleanse and purify your worlds of everything undesirable. When you learn to do this, you will be fulfilling the commands which Jesus gave: 'BE YE PERFECT, EVEN AS YOUR FATHER IN HEAVEN IS PERFECT. YE ARE GODS, THE THINGS I DO SHALL YE DO ALSO AND GREATER THINGS THAN THESE SHALL YE DO.'

"During the coming week, we shall give to you the practical application and use of this MIGHTY LAW OF LIFE.

"Each evening as we close, we invite you to join us in a powerful loving decree for the blessing and perfecting of yourselves, your homes, America and the world. Tonight, we say: 'MIGHTY I AM PRESENCE AND GREAT HOST OF ASCENDED MASTERS! POUR THE FULNESS OF YOUR LIGHT AND LOVE INTO EVERY BLESSED ONE WHO HAS LISTENED TO THESE WORDS AND TO EVERYONE IN THE WORLD! AWAKEN THEM INTO THE FULL TRUTH AND REALITY OF YOUR "MIGHTY I AM PRESENCE"! SHOW THEM THE REALITY OF YOURSELF, AS THE ONLY DIRECTING CONTROLLING PRESENCE AND POWER IN THEIR DAILY LIVES! PRODUCE PERFECTION AND HOLD YOUR DOMINION WITHIN THEM AND THEIR WORLDS FOREVER! WHAT WE DECREE FOR OURSELVES, WE COMMAND FOR ALL MANKIND, THE EARTH AND ITS ATMOSPHERE!'

"We enfold you in the Ascended Masters' Mantle of Light and Love to give you every good thing forever! and remember:

" 'The Light of God never fails'!

" 'The Light of God never fails'!

" 'The Light of God never fails'!

and 'The Mighty I AM Presence' is that Light!" ("The Voice," June, 1937, pp. 9-15, incl.)

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SUPREME COURT OF THE UNITED STATES.

No. 472.—October Term, 1943.

The United States of America, Petitioner, *vs.* Edna W. Ballard and Donald Ballard.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[April 24, 1944.]

Mr. Justice Douglas delivered the opinion of the Court.

Respondents were indicted and convicted for using, and conspiring to use, the mails to defraud. § 215 Criminal Code, 18 U. S. C. § 338; § 37 Criminal Code, 18 U. S. C. § 88. The indictment was in twelve counts. It charged a scheme to defraud by organizing and promoting the I Am movement through the use of the mails. The charge was that certain designated corporations were formed, literature distributed and sold, funds solicited, and memberships in the I Am movement sought "by means of false and fraudulent representations, pretenses and promises". The false representations charged were eighteen in number. It is sufficient at this point to say that they covered respondents' alleged religious doctrines or beliefs. They were all set forth in the first count. The following are representative:

> that Guy W. Ballard, now deceased, alias Saint Germain, Jesus, George Washington, and Godfre Ray King, had been selected and thereby designated by the alleged "ascertained masters," Saint Germain, as a divine messenger; and that the words of "ascended masters" and the words of the alleged divine entity, Saint Germain, would be transmitted to mankind through the medium of the said Guy W. Ballard;
>
> that Guy W. Ballard, during his lifetime, and Edna W. Ballard, and Donald Ballard, by reason of their alleged high spiritual attainments and righteous conduct, had been selected as divine messengers through which the words of the alleged "ascended masters," including the alleged Saint Germain, would be communicated to mankind under the teachings commonly known as the "I Am" movement;
>
> that Guy W. Ballard, during his lifetime, and Edna W. Ballard and Donald Ballard had, by reason of supernatural at-

> tainments, the power to heal persons of ailments and diseases and to make well persons afflicted with any diseases, injuries, or ailments, and did falsely represent to persons intended to be defrauded that the three designated persons had the ability and power to cure persons of those diseases normally classified as curable and also of diseases which are ordinarily classified by the medical profession as being incurable diseases; and did further represent that the three designated persons had in fact cured either by the activity of one, either, or all of said persons, hundreds of persons afflicted with diseases and ailments;

Each of the representations enumerated in the indictment was followed by the charge that respondents "well knew" it was false. After enumerating the eighteen misrepresentations the indictment also alleged:

> At the time of making all of the afore-alleged representations by the defendants, and each of them, the defendants, and each of them, well knew that all of said aforementioned representations were false and untrue and were made with the intention on the part of the defendants, and each of them, to cheat, wrong, and defraud persons intended to be defrauded, and to obtain from persons intended to be defrauded by the defendants, money, property, and other things of value and to convert the same to the use and the benefit of the defendants, and each of them;

The indictment contained twelve counts, one of which charged a conspiracy to defraud. The first count set forth all of the eighteen representations, as we have said. Each of the other counts incorporated and realleged all of them and added no additional ones. There was a demurrer and a motion to quash each of which asserted among other things that the indictment attacked the religious beliefs of respondents and sought to restrict the free exercise of their religion in violation of the Constitution of the United States. These motions were denied by the District Court. Early in the trial, however, objections were raised to the admission of certain evidence concerning respondents' religious beliefs. The court conferred with counsel in absence of the jury and with the acquiescence of counsel for the United States and for respondents confined the issues on this phase of the case to the question of the good faith of respondents. At the request of counsel for both sides the court advised the jury of that action in the following language:

Now, gentlemen, here is the issue in this case:

First, the defendants in this case made certain representations of belief in a divinity and in a supernatural power. Some of the teachings of the defendants, representations, might seem extremely improbable to a great many people. For instance, the appearance of Jesus to dictate some of the works that we have had introduced in evidence, as testified to here at the opening transcription, or shaking hands with Jesus, to some people that might seem highly improbable. I point that out as one of the many statements.

Whether that is true or not is not the concern of this Court and is not the concern of the jury—and they are going to be told so in their instructions. As far as this Court sees the issue, it is immaterial what these defendants preached or wrote or taught in their classes. They are not going to be permitted to speculate on the actuality of the happening of those incidents. Now, I think I have made that as clear as I can. Therefore, the religious beliefs of these defendants cannot be an issue in this court.

The issue is: Did these defendants honestly and in good faith believe those things? If they did, they should be acquitted. I cannot make it any clearer than that.

If these defendants did not believe those things, they did not believe that Jesus came down and dictated, or that Saint Germain came down and dictated, did not believe the things that they wrote, the things that they preached, but used the mail for the purpose of getting money, the jury should find them guilty. Therefore, gentlemen, religion cannot come into this case.

The District Court reiterated that admonition in the charge to the jury and made it abundantly clear. The following portion of the charge is typical:

> The question of the defendants' good faith is the cardinal question in this case. You are not to be concerned with the religious belief of the defendants, or any of them. The jury will be called upon to pass on the question of whether or not the defendants honestly and in good faith believed the representations which are set forth in the indictment, and honestly and in good faith believed that the benefits which they represented would flow from their belief to those who embraced and followed their teachings, or whether these representations were mere pretenses without honest belief on the part of the defendants or any of them, and, were the representations made for the purpose of procuring money, and were the mails used for this purpose.

As we have said, counsel for the defense acquiesced in this treatment of the matter, made no objection to it during the trial, and indeed treated it without protest as the law of the case throughout the proceedings prior to the verdict. Respondents did not change their position before the District Court after verdict and contend that the truth or verity of their religious doctrines or beliefs should have been submitted to the jury. In their motion for new trial they did contend, however, that the withdrawal of these issues from the jury was error because it was in effect an amendment of the indictment. That was also one of their specifications of errors on appeal. And other errors urged on appeal included the overruling of the demurrer to the indictment and the motion to quash, and the disallowance of proof of the truth of respondents' religious doctrines or beliefs.

The Circuit Court of Appeals reversed the judgment of conviction and granted a new trial, one judge dissenting. 138 F. 2d 540. In its view the restriction of the issue in question to that of good faith was error. Its reason was that the scheme to defraud alleged in the indictment was that respondents made the eighteen alleged false representations; and that to prove that defendants devised the scheme described in the indictment "it was necessary to prove that they schemed to make some, at least, of the (eighteen) representations . . . and that some, at least, of the representations which they schemed to make were false." 138 F. 2d 545. One judge thought that the ruling of the District Court was also error because it was "as prejudicial to the issue of honest belief as to the issue of purposeful misrepresentation." *Id.*, p. 546.

The case is here on a petition for a writ of certiorari which we granted because of the importance of the question presented.

The United States contends that the District Court withdrew from the jury's consideration only the truth or falsity of those representations which related to religious concepts or beliefs and that there were representations charged in the indictment which fell within a different category[1]. The argument is that this latter group of representations was submitted to the jury, that they were adequate to constitute an offense under the Act, and that they were

[1] Petitioner has placed three representations in this group: (1) A portion of the scheme as to healing which we have already quoted and which alleged that respondents "had in fact cured either by the activity of one, either, or all of said persons, hundreds of persons afflicted with diseases and ailments"; (2) The portion of the scheme relating to certain religious experiences described

supported by the requisite evidence. It is thus sought to bring the case within the rule of *Hall* v. *United States*, 168 U. S. 632, 639-640, which held that where an indictment contained "all the necessary averments to constitute an offense created by the statute", a conviction would not be set aside because a "totally immaterial fact" was averred but not proved. We do not stop to ascertain the relevancy of that rule to this case, for we are of the view that all of the representations charged in the indictment which related at least in part to the religious doctrines or beliefs of respondents were withheld from the jury. The trial judge did not differentiate them. He referred in the charge to the "religious beliefs" and "doctrines taught by the defendants" as matters withheld from the jury. And in stating that the issue of good faith was the "cardinal question" in the case he charged, as already noted, that "The jury will be called upon to pass on the question of whether or not the defendants honestly and in good faith believed the representations which are set forth in the indictment." Nowhere in the charge were any of the separate representations submitted to the jury. A careful reading of the whole charge leads us to agree with the Circuit Court of Appeals on this phase of the case that the only issue submitted to the jury was the question as stated by the District Court, of respondents' "belief in their representations and promises."

The United States contends that respondents acquiesced in the withdrawal from the jury of the truth of their religious doctrines or beliefs and that their consent bars them from insisting on a different course once that one turned out to be unsuccessful. Reliance for that position is sought in *Johnson* v. *United States*, 318 U. S. 189. That case stands for the proposition that, apart from situations involving an unfair trial, an appellate court will not grant a new trial to a defendant on the

in certain books (Unveiled Mysteries and The Magic Presence) and concerning which the indictment alleged "that the defendants represented that Guy W. Ballard, Edna W. Ballard, and Donald Ballard actually encountered the experiences pertaining to each of their said names as related and set forth in said books, whereas in truth and in fact none of said persons did encounter the experiences"; (3) The part of the scheme concerning phonograph records sold by respondents on representations that they would bestow on purchasers "great blessings and rewards in their aim to achieve salvation" whereas respondents "well knew that said . . . records were man-made and had no ability to aid in achieving salvation."

ground of improper introduction of evidence or improper comment by the prosecutor, where the defendant acquiesced in that course and made no objection to it. In fairness to respondents that principle cannot be applied here. The real objection of respondents is not that the truth of their religious doctrines or beliefs should have been submitted to the jury. Their demurmer and motion to quash made clear their position that that issue should be withheld from the jury on the basis of the First Amendment. Moreover, their position at all times was and still is that the court should have gone the whole way and withheld from the jury both that issue and the issue of their good faith. Their demurrer and motion to quash asked for dismissal of the entire indictment. Their argument that the truth of their religious doctrines or beliefs should have gone to the jury when the question of their good faith was submitted was and is merely an alternative argument. They never forsook their position that the indictment should have been dismissed and that none of it was good. Moreover, respondents' motion for new trial challenged the propriety of the action of the District Court in withdrawing from the jury the issue of the truth of their religious doctrines or beliefs without also withdrawing the question of their good faith. So we conclude that the rule of *Johnson* v. *United States*, *supra*, does not prevent respondents from reasserting now that no part of the indictment should have been submitted to the jury.

As we have noted, the Circuit Court of Appeals held that the question of the truth of the representations concerning respondent's religious doctrines or beliefs should have been submitted to the jury. And it remanded the case for a new trial. It may be that the Circuit Court of Appeals took that action because it did not think that the indictment could be properly construed as charging a scheme to defraud by means other than misrepresentations of respondents' religious doctrines or beliefs. Or that court may have concluded that the withdrawal of the issue of the truth of those religious doctrines or beliefs was unwarranted because it resulted in a substantial change in the character of the crime charged. But on whichever basis that court rested its action, we do not agree that the truth or verity of respondents' religious doctrines or beliefs should have been submitted to the jury. Whatever this particular indictment might require, the First Amend-

ment precludes such a course, as the United States seems to concede. "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect." *Watson* v. *Jones*, 13 Wall. 679, 728. The First Amendment has a dual aspect. It not only "forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship" but also "safeguards the free exercise of the chosen form of religion." *Cantwell* v. *Connecticut*, 310 U. S. 296, 303. "Thus the Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be." *Id.*, pp. 303-304. Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. *Board of Education* v. *Barnette*, 319 U. S. 624. It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom. The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with find-

ing their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain. The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position. *Murdock* v. *Pennsylvania*, 319 U. S. 105. As stated in *Davis* v. *Beason*, 133 U. S. 333, 342, "With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with." See *Prince* v. *Massachusetts*, 321 U. S. 158. So we conclude that the District Court ruled properly when it withheld from the jury all questions concerning the truth or falsity of the religious beliefs or doctrines of respondents.

Respondents maintain that the reversal of the judgment of conviction was justified on other distinct grounds. The Circuit Court of Appeals did not reach those questions. Respondents may, of course, urge them here in support of the judgment of the Circuit Court of Appeals. *Langnes* v. *Green*, 282 U. S. 531, 538-539; *Story Parchment Co.* v. *Paterson Co.*, 282 U. S. 555, 560, 567-568. But since attention was centered on the issues which we have discussed, the remaining questions were not fully presented to this Court either in the briefs or oral argument. In view of these circumstances we deem it more appropriate to remand the cause to the Circuit Court of Appeals so that it may pass on the questions reserved. *Lutcher & Moore Lumber Co.* v. *Knight*, 217 U. S. 257, 267-268; *Brown* v. *Fletcher*, 237 U. S. 583. If any questions of importance survive and are presented here, we will then have the benefit of the views of the Circuit Court of Appeals. Until that additional consideration is had, we cannot be sure that it will be necessary to pass on any of the other constitutional issues which respondents claim to have reserved.

The judgment is reversed and the cause is remanded to the Circuit Court of Appeals for further proceedings in conformity to this opinion.

Reversed.

Mr. Chief Justice STONE, dissenting.

I am not prepared to say that the constitutional guaranty of freedom of religion affords immunity from criminal prosecution for the fraudulent procurement of money by false statements as to one's religious experiences; more than it renders polygamy or libel immune from criminal prosecution. *Davis* v. *Benson*, 133 U. S. 333; see *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 572; cf. *Patterson* v. *Colorado*, 205 U. S. 454, 462; *Near v. Minnesota*, 283 U. S. 697, 715. I cannot say that freedom of thought and worship includes freedom to procure money by making knowingly false statements about one's religious experiences. To go no further, if it were shown that a defendant in this case had asserted as a part of the alleged fraudulent scheme, that he had physically shaken hands with St. Germain in San Francisco on a day named, or that, as the indictment here alleges, by the exertion of his spiritual power he "had in fact cured . . . hundreds of person afflicted with diseases and ailments", I should not doubt that it would be open to the Government to submit to the jury proof that he had never been in San Francisco and that no such cures had ever been effected. In any event I see no occasion for making any pronouncement on this subject in the present case.

The indictment charges respondents' use of the mails to defraud and a conspiracy to commit that offense by false statements of their religious experiences which had not in fact occurred. But it also charged that the representations were "falsely and fraudulently" made, that respondents "well knew" that these representations were untrue, and that they were made by respondents with the intent to cheat and defraud those to whom they were made. With the assent of the prosecution and the defense the trial judge withdrew from the consideration of the jury the question whether the alleged religious experiences had in fact occurred, but submitted to the jury the single issue whether petitioners honestly believed that they had occurred, with the instruction that if the jury did not so find, then it should return a verdict of guilty. On this issue the jury, on ample evidence that respondents were without belief in the statements which they had made to their victims, found a verdict of guilty. The state of one's mind is a fact as capable of fraudulent misrepresentation as is one's physical condition or the state of his bodily health. See *Seven Cases* v. *United States*, 239 U. S. 510, 517; cf. *Durland* v.

United States, 161 U. S. 306, 313. There are no exceptions to the charge and no contention that the trial court rejected any relevant evidence which petitioners sought to offer. Since the indictment and the evidence support the conviction, it is irrelevant whether the religious experiences alleged did or did not in fact occur or whether that issue could or could not, for constitutional reasons, have been rightly submitted to the jury. Certainly none of respondents' constitutional rights are violated if they are prosecuted for the fraudulent procurement of money by false representations as to their beliefs, religious or otherwise.

Obviously if the question whether the religious experiences in fact occurred could not constitutionally have been submitted to the jury the court rightly withdrew it. If it could have been submitted I know of no reason why the parties could not, with the advice of counsel, assent to its withdrawal from the jury. And where, as here, the indictment charges two sets of false statements, each independently sufficient to sustain the conviction, I cannot accept respondents' contention that the withdrawal of one set and the submission of the other to the jury amounted to an amendment of the indictment.

An indictment is amended when it is so altered as to charge a different offense from that found by the grand jury. *Ex parte Bain*, 121 U. S. 1. But here there was no alteration of the indictment, *Salinger* v. *United States*, 272 U. S. 542, 549, nor did the court's action, in effect, add anything to it by submitting to the jury matters which it did not charge. *United States* v. *Norris*, 281 U. S. 619, 622. In *Salinger* v. *United States*, *supra*, 548-9, we explicitly held that where an indictment charges several offenses, or the commission of one offense in several ways, the withdrawal from the jury's consideration of one offense or one alleged method of committing it does not constitute a forbidden amendment of the indictment. See also *Goto* v. *Lane*, 265 U. S. 393, 402-3; *Ford* v. *United States*, 273 U. S. 593, 602. Were the rule otherwise the common practice of withdrawing from the jury's consideration one count of an indictment while submitting others for its verdict, sustained in *Dealy* v. *United States*, 152 U. S. 539, 542, would be a fatal error.

We may assume that under some circumstances the submission to the jury of part only of the matters alleged in the indictment might result in such surprise to the defendant as to amount to

the denial of a fair trial. But, as in the analogous case of a variance between pleading and proof, a conviction can be reversed only upon a showing of injury to the "substantial rights" of the accused. *Berger* v. *United States*, 295 U. S. 78, 82. Here no claim of surprise has been or could be made. The indictment plainly charged both falsity of, and lack of good faith belief in the representations made, and it was agreed at the outset of the trial, without objection from the defendants, that only the issue of respondents' good faith belief in the representations of religious experiences would be submitted to the jury. Respondents, who were represented by counsel, at no time in the course of the trial offered any objection to this limitation of the issues, or any contention that it would result in a prohibited amendment of the indictment. So far as appears from the record before us the point was raised for the first time in the specifications of errors in the Circuit Court of Appeals. It is asserted that it was argued to the District Court on motions for new trial and in arrest of judgment. If so, there was still no surprise by a ruling to which, as we have said, respondents' counsel assented when it was made.

On the issue submitted to the jury in this case it properly rendered a verdict of guilty. As no legally sufficient reason for disturbing it appears, I think the judgment below should be reversed and that of the District Court reinstated.

Mr. Justice ROBERTS and Mr. Justice FRANKFURTER join in this opinion.

Mr. Justice JACKSON, dissenting.

I should say the defendants have done just that for which they are indicted. If I might agree to their conviction without creating a precedent, I cheerfully would do so. I can see in their teachings nothing but humbug, untainted by any trace of truth. But that does not dispose of the constitutional question whether misrepresentation of religious experience or belief is prosecutable; it rather emphasizes the danger of such prosecutions.

The Ballard family claimed miraculous communication with the spirit world and supernatural power to heal the sick. They were brought to trial for mail fraud on an indictment which charged

that their representations were false and that they "well knew" they were false. The trial judge, obviously troubled, ruled that the court could not try whether the statements were untrue, but could inquire whether the defendants knew them to be untrue; and, if so, they could be convicted.

I find it difficult to reconcile this conclusion with our traditional religious freedoms.

In the first place, as a matter of either practice or philosophy I do not see how we can separate an issue as to what is believed from considerations as to what is believable. The most convincing proof that one believes his statements is to show that they have been true in his experience. Likewise, that one knowingly falsified is best proved by showing that what he said happened never did happen. How can the Government prove these persons knew something to be false which it cannot prove to be false? If we try religious sincerity severed from religious verity, we isolate the dispute from the very considerations which in common experience provide its most reliable answer.

In the second place, any inquiry into intellectual honesty in religion raises profound psychological problems. William James, who wrote on these matters as a scientist, reminds us that it is not theology and ceremonies which keep religion going. Its vitality is in the religious experiences of many people. "If you ask what these experiences are, they are conversations with the unseen, voices and visions, responses to prayer, changes of heart, deliverances from fear, inflowings of help, assurances of support, whenever certain persons set their own internal attitude in certain appropriate ways."[1] If religious liberty includes, as it must, the right to communicate such experiences to others, it seems to me an impossible task for juries to separate fancied ones from real ones, dreams from happenings, and hallucinations from true clairvoyance. Such experiences, like some tones and colors, have existence for one, but none at all for another. They cannot be verified to the minds of those whose field of consciousness does not include religious insight. When one comes to trial which turns on any aspect of religious belief or representation, unbelievers among his judges are likely not to understand and are almost certain not to believe him.

[1] William James, Collected Essays and Reviews, pp. 427-8; see generally his Varieties of Religious Experience and The Will to Believe. See also Burton, Heyday of a Wizzard.

And then I do not know what degree of skepticism or disbelief in a religious representation amounts to actionable fraud. James points out that "Faith means belief in something concerning which doubt is theoretically possible."[2] Belief in what one may demonstrate to the senses is not faith. All schools of religious thought make enormous assumptions, generally on the basis of revelations authenticated by some sign or miracle. The appeal in such matters is to a very different plane of credulity than is invoked by representations of secular fact in commerce. Some who profess belief in the Bible read literally what others read as allegory or metaphor, as they read Aesop's fables. Religious symbolism is even used by some with the same mental reservations one has in teaching of Santa Claus or Uncle Sam or Easter bunnies or dispassionate judges. It is hard in matters so mystical to say how literally one is bound to believe the doctrine he teaches and even more difficult to say how far it is reliance upon a teacher's literal belief which induces followers to give him money.

There appear to be persons—let us hope not many—who find refreshment and courage in the teachings of the "I Am" cult. If the members of the sect get comfort from the celestial guidance of their "Saint Germain," however doubtful it seems to me, it is hard to say that they do not get what they pay for. Scores of sects flourish in this country by teaching what to me are queer notions. It is plain that there is wide variety in American religious taste. The Ballards are not alone in catering to it with a pretty dubious product.

The chief wrong which false prophets do to their following is not financial. The collections aggregate a tempting total, but individual payments are not ruinous. I doubt if the vigilance of the law is equal to making money stick by over-credulous people. But the real harm is on the mental and spiritual plane. There are those who hunger and thirst after higher values which they feel wanting in their humdrum lives. They live in mental confusion or moral anarchy and seek vaguely for truth and beauty and moral support. When they are deluded and then disillusioned, cynicism and confusion follow. The wrong of these things, as I see it, is not in the money the victims part with half so much as in the mental and spiritual poison they get. But that is precisely the thing the Constitution put beyond the reach of

2 William James, The Will to Believe, p. 90.

the prosecutor, for the price of freedom of religion or of speech or of the press is that we must put up with, and even pay for, a good deal of rubbish.

Prosecutions of this character easily could degenerate into religious persecution. I do not doubt that religious leaders may be convicted of fraud for making false representations on matters other than faith or experience, as for example if one represents that funds are being used to construct a church when in fact they are being used for personal purposes. But that is not this case, which reaches into wholly dangerous ground. When does less than full belief in a professed credo become actionable fraud if one is soliciting gifts or legacies? Such inquiries may discomfort orthodox as well as unconventional religious teachers, for even the most regular of them are sometimes accused of taking their orthodoxy with a grain of salt.

I would dismiss the indictment and have done with this business of judicially examining other people's faiths.